

De Piero v. Pennsylvania State University, et al., Case No. 2:23-cv-02281

JOINT APPENDIX PART TWO
App.0445-0968

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ZACK DE PIERO, :
 :
 Plaintiff, : NO. 2:23-cv-02281-WB
 :
 -vs- :
 :
 PENNSYLVANIA STATE UNIVERSITY, :
 :
 Et al, :
 :
 Defendants. :

- - -

VIDEOTAPED DEPOSITION

DEPONENT: Matthew Rigilano

DATE: May 9, 2024

TIME: 10:07 a.m.

PLACE: 1500 Market Street, 38th Floor

Philadelphia, Pennsylvania

REPORTER: Vicki Mengel, Notary Public

FARRELL COURT REPORTING

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Matthew Rigilano

Page 2

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2

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8

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Farrell Court Reporting

Matthew Rigilano

Page 3

1 I N D E X

2

3 WITNESS PAGE

4

5 MATTHEW RIGILANO

6

7 BY: MR. ALLEN 4

8 BY: MR. SMITH 168

9

10 E X H I B I T S

11

12 1 Notice 5

13 2 Meetings agenda '19-20 31

14 3 Meetings agenda '20-21 39

15 4 Report draft 50

16 5 E-mail 80

17 6 E-mails 92

18 7 Letter of award 105

19 8 E-mail and attachments 108

20 9 Audio clips 126

21 10 E-mail 155

22 11 Text messages 159

23

24 (Exhibits attached to transcript except for Exhibit 9)

Farrell Court Reporting

Matthew Rigilano

Page 4

1 VIDEOGRAPHER: We're on the record. The
2 following is a videotaped deposition. My name is Rick
3 Kanzinger, Jr, and I'm with Farrell Court Reporting
4 Service. This deposition is being taken on Thursday, May
5 9, 2024. The time is 10:08 a.m. We are located at 1500
6 Market Street, 38th Floor in Philadelphia, Pennsylvania.
7 Today's case is Zack De Piero vs. Penn State University,
8 et al, Case No. 2:23-cv-02281-WB. This is filed in the
9 United States District Court for the Eastern District of
10 Pennsylvania, and present for the taking of this
11 videotaped deposition are the witness, Matthew Rigilano.
12 And would counsel please state their names for the record.

13 MR. ALLEN: My name is Michael Thad Allen for the
14 plaintiff, Zack De Piero.

15 MR. SMITH: Matthew J. Smith from Saul Ewing on
16 behalf of defendants.

17 VIDEOGRAPHER: The court reporter is Vicki
18 Mengel. Will the court reporter please swear in the
19 witness.

20 MATTHEW RIGILANO, was called as a witness and
21 after having been first duly sworn, according to law, was
22 examined and testified as follows:

23 VIDEOGRAPHER: You may begin questioning.

24 BY MR. ALLEN:

Farrell Court Reporting

Matthew Rigilano

Page 5

1 Q. So as you heard, my name is Mike Allen. I'm the
2 attorney for Zack De Piero, who's the plaintiff in this
3 case. I just wanted to go over at the beginning some
4 ground rules.

5 (Exhibit 1 was marked for identification.)

6 BY MR. ALLEN:

7 Q. I'm gonna first introduce Exhibit No. 1 for the
8 record is Plaintiff's Re-Notice of Deposition of Matthew
9 Rigilano. I've given a copy of this to Mr. Smith as well,
10 and I'll come back and ask you a question about that. But
11 before we do that, can I ask if you've ever been deposed
12 before?

13 A. No, I have not.

14 Q. Is there anything to your knowledge that would
15 interfere with your ability to tell truthful testimony
16 today?

17 A. No.

18 Q. You're not on any medication that would interfere
19 with your memory?

20 A. No.

21 Q. You're not feeling sick, dizzy?

22 A. No.

23 Q. You don't have a mental illness that would
24 prevent you from testifying truthfully?

Farrell Court Reporting

Matthew Rigilano

Page 6

1 A. No.

2 Q. Thank you. As you will probably notice sooner or
3 later, there will be objections from time to time. I'm
4 gonna ask you first off if you're represented by an
5 attorney today.

6 A. Yes.

7 Q. And is your attorney Matthew Smith?

8 A. Yes.

9 Q. Okay. So Mr. Smith may object from time to time.
10 Except in some few circumstances which will be obvious,
11 that does not relieve you of the obligation to answer the
12 question. We're creating a record for the court which may
13 by used in trial. Therefore, he will from time to time
14 place objections on the record to preserve those
15 objections for trial.

16 MR. SMITH: Michael, just to clarify, I don't
17 dispute I'm here on his behalf, but technically represent
18 the university. He's an employee of the university. I
19 obviously represent the individual defendants in this
20 lawsuit, but just to clarify that we don't represent him
21 in an individual capacity.

22 BY MR. ALLEN:

23 Q. You understand you're not being sued. You're not
24 a party to this lawsuit, right?

Farrell Court Reporting

Matthew Rigilano

Page 7

1 A. Yes.

2 Q. Whether there's anything that may arise
3 concerning your individual capacity, that might be
4 something you want to consult your lawyer about. But if
5 that comes up, feel free to consult with your lawyer.

6 You can take a break at any time. Just tell me.
7 I make one exception is you are obligated to answer the
8 question that's before you. If at any time you don't
9 understand my question, just ask. Feel free to interrupt
10 me. If you don't interrupt me for clarification of a
11 question, I will assume you've understood the question as
12 asked. Is that clear?

13 A. Yes.

14 Q. Thank you. Can you explain -- now, I'm not gonna
15 ask you to disclose anything you've discussed with your
16 attorney concerning legal advice, but I am entitled to
17 know what you've done to prepare for today's deposition.

18 A. I have met with Matt Smith.

19 Q. Did you review any documents?

20 A. Um, yes.

21 Q. What documents did you review?

22 A. I saw -- can I says things that -- is this not
23 covered by attorney client?

24 MR. SMITH: You can tell him what you -- what you

Matthew Rigilano

Page 8

1 reviewed. You obviously --

2 BY MR. ALLEN:

3 Q. So underlying facts are not privileged. Legal
4 advice, consultation with your attorney is privileged.

5 A. Sure.

6 MR. ALLEN: And I'm not lecturing your client on
7 privilege. So any time, feel free to --

8 MR. SMITH: Just --

9 BY MR. ALLEN:

10 Q. So the documents themselves would not be
11 protected by privilege, and --

12 A. I understand.

13 Q. -- the plaintiff is entitled to know what you
14 consulted in preparation for your deposition.

15 A. Okay. I saw a text message that I had sent that
16 I exchanged with -- or a screenshot of a text message.

17 Q. Were these multiple text messages?

18 A. Um, just one.

19 Q. Okay. And what did the text message say?

20 A. Um, the text message, I don't recall word for
21 word what it said, but it was me responding to something
22 that Zack was talking about, like, with respect to an
23 e-mail chain.

24 Q. And what was -- what was Mr. De Piero saying?

Matthew Rigilano

Page 9

1 A. I think he was -- again, not verbatim, but
2 voicing frustration about a colleague's opinion about mask
3 wearing or failure to wear a mask.

4 Q. Who was the colleague?

5 A. I don't know entirely. The chain I think had
6 multiple respondents, so I don't know what -- what the
7 text message was in specific reference to.

8 Q. You mean the text message was between you and
9 Mr. De Piero?

10 A. Yes.

11 Q. But there was an e-mail referenced in the message
12 that had multiple recipients?

13 A. Yes.

14 Q. Okay. And I'm sure if that were to come up in an
15 exhibit, you would recognize it?

16 A. Yes.

17 Q. So we may have opportunity to discuss that. Do
18 you recognize the Exhibit No. 1 that I've introduced into
19 the record?

20 A. This is the subpoena?

21 Q. This is actually captioned re-notice of your
22 deposition.

23 A. Oh, okay.

24 Q. You see the caption there on the first page?

Farrell Court Reporting

Matthew Rigilano

Page 10

1 Just let the record reflect I'm pointing for the witness
2 without marking --

3 A. Oh, yes.

4 Q. Is it say to safe that you've appeared today to
5 testify in response to this rennotice of deposition?

6 A. Yes.

7 Q. And you were served a subpoena in this case,
8 correct?

9 A. Yes.

10 Q. And you didn't refuse service of that subpoena,
11 did you?

12 A. No.

13 Q. Thank you. I just wanna talk a little bit about
14 your background, the nature of your training and
15 qualifications.

16 MR. SMITH: Michael, not to -- I don't mean to
17 interrupt. Just to get on the record, I do just wanna
18 note for the record that we served objections to the
19 document requests attached to this rennotice, just so
20 that's --

21 MR. ALLEN: Yes, and you can --

22 MR. SMITH: -- on the record, but I'm not
23 disputing the notice.

24 MR. ALLEN: You can introduce those in the record

Farrell Court Reporting

Matthew Rigilano

Page 11

1 if you want when you do redirect or whatnot.

2 MR. SMITH: Not necessary.

3 MR. ALLEN: And feel free to discuss this off the
4 record.

5 BY MR. ALLEN:

6 Q. So I just want to talk to you a bit about your
7 job, your background, your qualifications. Can you state
8 for the record where you work.

9 A. Penn State Abington.

10 Q. And what is the nature of your work for Penn
11 State Abington?

12 A. Um, I am currently an associate teaching
13 professor of writing and English. I teach courses in
14 writing and English.

15 Q. Does that include English composition?

16 A. Yes.

17 Q. And when you say you teach English, can you
18 explain what you mean which that?

19 A. Sure. Um, there are some courses at Abington
20 that are writing courses specifically to teach writing at
21 different levels. And then, there are some courses that
22 are more -- are based in literature, different literary
23 periods. So when I say writing and English, that's the
24 distinction.

Matthew Rigilano

Page 12

1 Q. Is your primary function to teach writing and
2 composition at the university of Penn State?

3 A. It is.

4 Q. And you said this again, but -- you said this
5 before, but I'm gonna ask again. What is your official
6 title?

7 A. It is -- I was recently promoted to associate
8 teacher professor. At the time that we're discussing, I
9 was -- I've been for the first five years of my employment
10 there an assistant teaching professor.

11 Q. And what's the difference being assistant
12 teaching professor and associate teaching professor?

13 A. I -- it's the -- associate is the sort of next
14 step up that you are -- that you can apply for after five
15 years of employment. Presumably it will entail a longer
16 contract.

17 Q. When you say longer contract, what's your
18 understanding of the nature of your contract? Let me put
19 it differently.

20 When you were an assistant teaching professor,
21 what was the nature of your contract as you understood it
22 with Penn State?

23 A. It was a year-to-year teaching contract. So
24 every year, I would be awarded a new contract.

Farrell Court Reporting

Matthew Rigilano

Page 13

1 Q. Are you familiar with the term adjunct professor?

2 A. Yes.

3 Q. Would you say that that was the equivalent of an
4 adjunct professor?

5 A. No. Typically, an adjunct doesn't have any kind
6 of, like, full-time status. Whereas I have full-time
7 status, which would mean that I was within certain
8 limitations guaranteed to teach four sections every
9 semester.

10 Q. Is the distinction you're drawing being that you
11 weren't paid by the class? You had a full-time equivalent
12 position for the entire year?

13 A. Correct. Yeah, that my contract would stipulate
14 the salary, basically.

15 Q. And you said I was. Do you mean when you were an
16 assistant teaching professor?

17 A. Yes.

18 Q. And you said you presumably will have a longer
19 term contract as an associate teaching professor?

20 A. Yes. The details aren't clear to me, but I think
21 the general understanding is that, um, as you get
22 subsequent promotions on this track, you get more sort of
23 job security.

24 Q. Uh-huh.

Matthew Rigilano

Page 14

1 A. Although this is the relatively new track that
2 Penn State has developed only in the really just starting
3 when I began. So before that, I think there were
4 lecturers and adjuncts and only recently did they have
5 this teaching track.

6 Q. And explain for the record why you know that you
7 were -- you were promoted to associate teaching professor,
8 but you don't know the terms of what that means.

9 A. Could you rephrase that, please?

10 Q. Let me -- yeah. Can we strike that question?

11 But you just explained that you presume that
12 there's some longer window of job security?

13 A. Yeah.

14 Q. But you don't know what it is?

15 A. Uh --

16 Q. So that would suggest to me that you don't know
17 the terms of your employment.

18 MR. SMITH: Objection to form.

19 BY MR. ALLEN:

20 Q. So my question for you is I'm just -- I just want
21 to understand your position. Can you explain --

22 A. Sure.

23 Q. -- why you don't know the terms of your
24 employment in that sense and you just presume it?

Matthew Rigilano

Page 15

1 MR. SMITH: Objection to form.

2 THE WITNESS: The -- I have sort of an
3 understanding that the contract will likely be a three
4 year contract. This is something I've been just sort of
5 like told, can't remember by whom, precisely. I say
6 presumably in the sense that I haven't received my -- I
7 was just promoted and I haven't received yet, like, my new
8 contract that would have a -- presumably; again,
9 presumably insofar as just because I haven't seen it, a
10 higher wage and different terms for the year.

11 BY MR. ALLEN:

12 Q. And who did you receive this news from that you
13 were gonna be promoted?

14 A. Just a couple weeks ago. I believe -- I'm
15 blanking on the -- the interim chancellor's name. But
16 also from Friederike Baer, who's our dean of the division.

17 Q. Can you spell Friederike Baer's name for the
18 record, please?

19 A. Um --

20 Q. Since you're a writing professor, you asked for
21 it.

22 A. Can I take -- can I refer to the document in
23 front of me?

24 Q. Please. And he's referring to Exhibit 1 for the

Matthew Rigilano

Page 16

1 record.

2 A. Friederike Baer?

3 Q. Yes.

4 A. This is spelled F-R-I-E-D-E-R I-K-E B-A-E-R.

5 Q. Her last name is B-A-E-R, and that's pronounced
6 Baer?

7 A. Uh-huh.

8 Q. Thank you. And you said she was the dean of your
9 division. Did I get that correctly or did I get that
10 wrong?

11 A. Um, yes, the dean of arts and humanities.

12 Q. Okay. And as the dean of arts and humanities,
13 what is her relationship to your position where you teach
14 writing and English?

15 A. Um, she's the person who -- who one goes to.
16 She's like our supervisor. She renews our contract
17 every -- we -- all employees have a yearly evaluation, and
18 she's the one who evaluates our sort of annual activities
19 and suggests, you know, continued employment.

20 Q. Uh-huh.

21 A. Or deals with those kinds of issues.

22 Q. And when you teach, do you belong to a specific
23 department?

24 A. Um, the departmental structure at Abington is a

Matthew Rigilano

Page 17

1 little bit confusing.

2 Q. Uh-huh.

3 A. There are programs.

4 Q. Okay.

5 A. So there's the writing program and the English
6 program that are two different things, but the courses
7 taught by instructors in those programs are all English
8 courses. They have the english designation.

9 Q. Uh-huh.

10 A. Um, so I'm a part of those two programs.

11 Q. And explain to the best -- you said it seems to
12 be confusing, so that's fine. That's on the record, but
13 please explain what you understand by a program as an
14 institutional unit of Penn State.

15 A. Yeah. So the -- the writing program, for
16 instance, yeah, why it isn't a department is kind of an
17 administrative question that I couldn't speak to.

18 Q. Uh-huh.

19 A. But the function of the program is to schedule
20 courses, organize events.

21 Q. Uh-huh.

22 A. And there are -- we have writing program meetings
23 that we use for -- to organize for professional
24 development, things of that nature.

Matthew Rigilano

Page 18

1 Q. And do the programs have their own leaders or
2 director of heads?

3 A. Yes. Um, there is a distinction between the
4 writing program, which I think exists sort of like
5 immediately under the Division of Arts and Sciences. And
6 so for whatever reason, the writing program doesn't have a
7 chair. It just has a coordinator, whereas the English
8 program does have a chair.

9 Q. And then above the program is the dean or above
10 the program is the English department chair?

11 A. The dean, I believe.

12 Q. Okay. And that's true for the English program as
13 well?

14 A. Yes. So the -- the chair of the English program
15 would -- would -- yeah, the dean would be the next sort of
16 rank above them.

17 Q. And is there a separate English department or the
18 program -- the English program and the English department
19 is the same thing?

20 A. I -- I think it's just a program.

21 Q. Okay. Are there departments, academic
22 departments within the arts and sciences?

23 A. At -- at the larger institutional level at Penn
24 State Main, for instance, they have departments. Here, I

Matthew Rigilano

Page 19

1 think it's -- I could be wrong or misinformed, but I
2 believe they're just programs, the idea being that they're
3 responsible for providing courses for majors.

4 Q. Okay.

5 A. Um --

6 Q. Is there a writing major?

7 A. There is a writing minor.

8 Q. Uh-huh.

9 A. But not a writing major.

10 Q. Yeah.

11 A. There is an English major.

12 Q. That was gonna be my follow-up question. Thank
13 you.

14 You said the English program has a chair. Who is
15 that?

16 A. Currently, it is Marissa Nicosia.

17 Q. Who was the program chair of English in 2020?

18 A. I believe it was Lila Naydan.

19 Q. And to your knowledge, how long did she hold that
20 position as chair of the English program?

21 A. Um, Covid has made some of these memories very
22 difficult.

23 Q. Just for --

24 A. A couple of years.

Farrell Court Reporting

Matthew Rigilano

Page 20

1 Q. Thank you. I'm talking about after Covid, but --
2 so 2020 to whenever.

3 A. Yeah. Um, I believe she held the post before
4 that and then for some years after. She took a sabbatical
5 at one point.

6 Q. Okay. And who is the -- you said there's a
7 coordinator of the writing program. Who that is?

8 A. Um, that is Lila Naydan.

9 Q. Currently?

10 A. Yes.

11 Q. And was she also program coordinator reaching
12 back to 2020 --

13 A. Yes.

14 Q. -- of the writing program?

15 A. Yes.

16 Q. Thank you. Before she became the program
17 director of the English program, what was Marissa
18 Nicosia's relationship to either English or writing?

19 A. Um, she is -- I'm trying to think of her rank
20 precisely, but she's a tenured professor of Renaissance
21 literature.

22 Q. And what is Lila Naydan's responsibilities as a
23 professor? Not as an administrator, but as a professor?

24 A. She teaches 20th century and contemporary

Matthew Rigilano

Page 21

1 American literature.

2 Q. Does she teach writing courses?

3 A. Periodically.

4 Q. And you mentioned that M N was a tenured
5 professor. You also referred to your new track. That's
6 not a tenure track position, is it?

7 A. Correct. The -- the teaching track is a
8 nontenure line.

9 Q. Can you explain for the record the difference
10 between these non-tenured lines such as you have and
11 tenure?

12 A. Sure. The -- the main difference is that the
13 teaching line, as the sort of title suggests, is focused
14 entirely on teaching. So, um, your evaluations, your, you
15 know, obligation is to teach. Whereas on the tenure
16 track, there's an obligation to do research. And once you
17 get tenure, you have, you know, relatively good job
18 security.

19 Q. Why? Can you explain?

20 A. I think it varies institutionally. They have
21 different kind of notions of what counts as tenure. But I
22 think the idea being that -- again, school by school and
23 state by state to my understanding, but the idea being
24 that you -- that tenure gives you a little bit more

Matthew Rigilano

Page 22

1 license to, you know, pursue creative intellectual
2 projects without censure. That's the traditional
3 definition, I think.

4 Q. So in your understanding, there's a great deal
5 more freedom as a tenured professor?

6 MR. SMITH: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. ALLEN:

9 Q. And that includes the freedom to say what you
10 want about topics that interest you?

11 MR. SMITH: Objection to form.

12 THE WITNESS: Um, I think traditionally. I
13 don't -- I think that, you know, this is a larger question
14 beyond my expertise. But tenure as a sort of idea has
15 been eroded or pulled back significantly across the board
16 in the last 20 years, so it's difficult to say precisely
17 what tenure grants you today.

18 BY MR. ALLEN:

19 Q. You feel that people at Penn State who have
20 tenure have more job security than you do, correct?

21 MR. SMITH: Objection to form.

22 THE WITNESS: Yes, only -- I mean, primarily
23 because they have do not have a yearly contract. I --
24 I -- my -- I could be -- my job could not be renewed, you

Matthew Rigilano

Page 23

1 know, just for any reason, like dropping numbers of
2 students, et cetera.

3 BY MR. ALLEN:

4 Q. And that's not true for a tenured professor?

5 A. Not in my understanding.

6 Q. And if you had this job security, you would also
7 understand you had more freedom to say what you chose on
8 matters of concern?

9 MR. SMITH: Objection to form.

10 THE WITNESS: I'm not sure.

11 BY MR. ALLEN:

12 Q. Who's your immediate supervisor.

13 A. I guess Friederike Baer.

14 Q. As a program coordinator, what role did Lila
15 Naydan exercise over you? Let me strike that question.
16 That was terrible.

17 As an assistant teacher of writing or assistant
18 teaching professor of writing, what authority did Lila
19 Naydan have over you as a writing program coordinator?

20 A. I'm not sure what authority. Um, I can tell you
21 what her role was as coordinator. She -- her -- the
22 primary role of the coordinator to schedule courses.

23 Q. Did she assign you courses?

24 A. Um, every year, there's a coordination between

Matthew Rigilano

Page 24

1 the writing coordinator and the English chair. They send
2 out request forms, basically, asking back to members what
3 they would like to teach in the semester being -- being
4 scheduled.

5 Q. And what other responsibilities does she have
6 vis-a-vie, you know, assistant teaching professors?

7 A. Um, so aside from scheduling, the -- the other I
8 think sort of central duty is to organize the writing
9 program meetings.

10 Q. Describe the writing program meetings. What are
11 those?

12 A. About two or three times a semester, I think
13 that's vary. Normally, yeah, two or three, um, the -- we
14 have an hour long meeting, the substance of which can
15 vary. There are some meetings dedicated to revising
16 course outcomes. There are some meetings that are sort of
17 we'll invite someone from a different, you know, program
18 to talk about advising. Sometimes, members of the program
19 will, like, provide professional development. So, for
20 instance, I've ran a meeting and describe a concept, for
21 instance, and organizing events. Oftentimes, the agenda
22 will have multiple ideas on it.

23 Q. Each program meeting, is that what you call them?

24 A. Yeah.

Farrell Court Reporting

Matthew Rigilano

Page 25

1 Q. Each program meeting will have multiple items
2 often?

3 A. Often, they'll be like, you know, we'll talk.
4 We'll begin, um, with, like, catching up after, you know,
5 like an event or something like that. Or if there's some
6 other kind of pressing concern, we'll talk about that in
7 addition to whatever sort of primary, you know, item.

8 Q. And how many total faculty members, whether
9 tenured or just teaching professors, are there in the
10 writing program?

11 A. Can I count for a second?

12 Q. Yeah.

13 A. There are a number of adjuncts that don't go to
14 meetings. They're not invited or, you know. I cannot
15 attest specifically to how many faculty members there are
16 in the writing program. Part of the issue is that there
17 are faculty members that are -- that primarily teach in
18 the English courses and then will periodically teach,
19 like, one or two writing courses. And they -- they don't
20 go to the writing program meetings, for instance, even
21 though they teach writing courses. So I'd say in general,
22 the max number of people that would attend the meetings
23 would be somewhere like 12, 10 or 12.

24 Q. And do you know how many associate and assistant

Matthew Rigilano

Page 26

1 teaching professors are associated with the writing
2 program?

3 A. Um, approximately six or seven.

4 Q. And was that the same in 2020 as now?

5 A. Yeah.

6 Q. And about these writing program meetings, you
7 said that there are some adjuncts that teach courses, but
8 they don't go to the program meetings. I believe you said
9 they're not invited?

10 A. I don't think they're on the -- the listserv that
11 would -- where the announcement would reach them.

12 Q. And for a teaching professor of whatever rank, is
13 it expected that they'll go?

14 A. It's not mandatory, but recommended.

15 Q. If you were a first year assistant teaching
16 professor, could you just decide to blow them all off?

17 MR. SMITH: Objection to form.

18 THE WITNESS: You could.

19 BY MR. ALLEN:

20 Q. Would that have a positive impact on your job
21 prospects at Penn State Abington?

22 MR. SMITH: Objection to form.

23 THE WITNESS: I think it probably depends on the
24 context. Lila usually mentions like, you know, that the

Matthew Rigilano

Page 27

1 meetings aren't sort of -- you know, they're not
2 mandatory. There have been times when people have had
3 like issues with child care or things of that nature on a
4 recurrent basis that made it so it's like hard for them to
5 go regularly. So, um, um, yeah.

6 BY MR. ALLEN:

7 Q. Have you ever told Lila -- you refer to her as
8 Lila or Lisa?

9 A. Lila.

10 Q. Have you ever told Lila Naydan that you aren't
11 gonna go to any of them? What I mean by that, you're not
12 gonna go to any of them, not a single one.

13 A. Have I ever?

14 Q. Yeah.

15 A. No.

16 Q. Would you ever do that?

17 A. No.

18 Q. Why not?

19 A. I think they're a -- a valuable activity if
20 you're interested in, you know, sort of creating a kind of
21 community of teachers. Or if you are interested in
22 organizing events, that's one of the things that gets
23 talked about. You can't really be a part of the event,
24 which you might want to for the sake of service, if you

Matthew Rigilano

Page 28

1 don't go to the meetings, so I -- that's why I go.

2 Q. Does going to the meetings count as service to
3 the university?

4 A. I don't think so. I've never put it on my
5 evaluation. I think providing, like, professional
6 developments at one of the meetings, like running the show
7 counts as service. But I think attending is just --

8 Q. And I guess my follow-up question, have you ever
9 known an assistant teaching professor to skip them
10 consistently?

11 A. Yes.

12 Q. Who?

13 A. Jimmy Pack.

14 Q. And did that have any positive impact on his
15 career at Penn State Abington?

16 A. I can't say.

17 Q. Did it have any negative impact?

18 A. I don't know.

19 Q. When you were an assistant writing professor
20 of -- at Penn State Abington, did you go to them
21 consistently?

22 A. Yes.

23 Q. Did you feel an obligation to go to them
24 consistently?

Farrell Court Reporting

Matthew Rigilano

Page 29

1 A. A personal obligation. I -- I -- I'm the kind of
2 person that would go to -- would go to the meetings to be
3 a part of it.

4 Q. And back to the structure of the program both
5 writing and English.

6 A. Uh-huh.

7 Q. I believe you said that without giving specific
8 dates, but in the range of 2020 to 2022, Lila Naydan was
9 both the program chair of writing -- of English and the
10 program director of writing?

11 A. Yes.

12 MR. SMITH: Objection to form.

13 BY MR. ALLEN:

14 Q. Okay. And in that -- in either of those roles,
15 did she play a part in evaluating you?

16 A. No.

17 Q. Did she review your teaching evaluations from
18 students?

19 A. No.

20 Q. That would only be Friederike Baer?

21 A. Yes.

22 Q. Was anyone else involved in reviewing your
23 performance?

24 A. No. At the end of the year, one writes a FAR,

Matthew Rigilano

Page 30

1 faculty annual review. And that gets submitted to
2 Friederike, who gets the whole thing.

3 Q. You're responsible for compiling the FAR, which
4 is a faculty annual review?

5 A. Yeah.

6 Q. And during the time we just talked about, 2020 to
7 2022, what position did Zack De Piero have at Penn State
8 Abington?

9 A. We were hired at the same time with the same
10 position, so he was an assistant teaching professor.

11 Q. Likewise teaching classes in English as well as
12 in writing?

13 A. He -- yeah. He mostly taught writing courses.
14 But I believe he taught an inter-domain class having to do
15 with The Beatles, which is a hybrid sort of course.

16 Q. When you say inter-domain, what do you mean by
17 that?

18 A. It's a new -- new-ish designation for a course
19 that has two different disciplinary angles. So for
20 instance, you could teach a course that is both humanities
21 focus, but then also maybe social sciences.

22 Q. Is it fair to say another word for that is
23 interdisciplinary or --

24 A. Yeah. I think they are conceptually

Matthew Rigilano

Page 31

1 interdisciplinary. I think the reason they're called
2 inter-domain is because in the system of general education
3 at Penn State, there are, like, knowledge domains, and so
4 these kinds of courses deal with more than one domain.

5 MR. ALLEN: I'm gonna mark as Exhibit 2 for the
6 record. Matt, I don't have a Bates numbers on this one.
7 I'm not aware of its Bates number at this time.

8 (Exhibit 2 was marked for identification.)

9 BY MR. ALLEN:

10 Q. So I just introduced for the record as Exhibit 2
11 a document captioned Writing Program Meeting dates 2019 to
12 2020. Do you see that?

13 A. Yes.

14 Q. Do you recall seeing this document at that time?

15 A. Um, I've seen a lot of these kinds of documents.
16 This doesn't seem unfamiliar, but I'm sure I've seen it.

17 Q. And this would have been a time you were an
18 assistant writing professor, right?

19 A. Yes.

20 Q. Assistant writing professor of teaching. Is that
21 the correct title?

22 A. Oh, excuse me. Yeah. Assistant teaching
23 professor of writing.

24 Q. Thank you for clarifying. And so is this the

Matthew Rigilano

Page 32

1 typical year of a writing program meeting schedule? In
2 other words, you had described them earlier as two to
3 three times a semester. And you would agree with me,
4 wouldn't you, that this plans out three meetings each
5 semester?

6 A. Yeah.

7 Q. And the meetings are focused on different topics,
8 correct?

9 A. Yes.

10 Q. The meeting one is captioned topic start of
11 semester business, correct?

12 A. Yes.

13 Q. What would be included as start of semester
14 business?

15 A. Um, likely discussing what events might get
16 organized, if there's anything peculiar having to do with
17 advising or scheduling, typical sort of things.

18 Q. And then meeting two was developing inclusive
19 writing prompts. Do you see that?

20 A. Yeah.

21 Q. And that's taught by someone named Grace
22 Lee-Amuzie. Did I read that right?

23 A. Yes, I think so.

24 Q. And who is Grace Lee-Amuzie?

Farrell Court Reporting

Matthew Rigilano

Page 33

1 A. Um, she at the time I believe was an assistant
2 teaching professor. She is now on the tenure line. Um,
3 she was teaching for I believe a program known as AIMSS,
4 A-I-M-S-S, so it's primarily she teaches and I think
5 coordinating courses, writing courses for students for
6 whom English is a second language, international students.

7 Q. Is that what AIMSS is focused on?

8 A. Yes.

9 Q. Okay. And you said she made the jump from this
10 assistant teaching professor to a tenure track position?

11 A. Yeah. She applied to an opening and has that
12 job.

13 Q. Is that considered a promotion?

14 A. No. I think it was she got a new -- a new
15 position, so it starts -- now, she's an assistant
16 professor.

17 Q. And you understand it as a more favorable
18 position to have a tenure track position than an assistant
19 writing professor position?

20 A. Um, if you want to do research, yes.

21 Q. It comes with more potential job security,
22 correct?

23 MR. SMITH: Objection to form.

24 THE WITNESS: Inasfar as it's not on an annual

Matthew Rigilano

Page 34

1 contract, yes.

2 BY MR. ALLEN:

3 Q. Do you remember what developing including writing
4 prompts included at that time?

5 A. I don't.

6 Q. And then it looks like you gave the meeting
7 three, right, critical thinking in the writing classroom?

8 A. Yes.

9 Q. Did I read that correctly?

10 A. Uh-huh.

11 Q. That was back in November of 2019. What was the
12 substance of that class?

13 A. So --

14 Q. Or excuse me. Strike that.

15 What was the substance of that writing program
16 meeting that you led in November of 2019?

17 A. So I provided a -- an overview, a brief history
18 of the concept of critical thinking as it develops in
19 philosophy and English pedagogy and tried to show how
20 critical thinking is valuable in the writing classroom.

21 Q. And did you mean by critical thinking universal
22 concepts of critical thinking?

23 A. I'm sorry. What do you mean by universal?

24 Q. Sure. Were you talking about critical thinking

Matthew Rigilano

Page 35

1 for all human beings or were you talking about critical
2 thinking in terms of criticizing certain aspects of
3 American life or --

4 A. Um, I think both in a certain sense. Critical
5 thinking as, like, a cognitive faculty, like the ability
6 to synthesize different kinds of information, but also
7 critical thinking as critique, as -- as ideology critique.

8 Q. Were you talking about the skills of critique of
9 ideology or were you talking about specific ideologies
10 that you had a criticism of?

11 A. Um, the skills.

12 Q. And so I think that's what I was getting at in
13 term of universal approach. You were teaching the basic
14 skills that all human beings could and should learn?

15 A. Primarily, yeah.

16 Q. And you didn't see yourself as trying to convey a
17 particular point of view on given ideological topics or
18 anything of that nature?

19 A. Not intentionally, no. I do -- I mentioned the
20 Frankfurt school of critical theory, which is a
21 philosophical orientation developed in 20th century German
22 Marxism. And so naturally, their form of critique is a
23 Marxist critique. That's part of the tradition of
24 critical thinking.

Matthew Rigilano

Page 36

1 Q. And do you consider yourself a Marxist?

2 A. Yeah.

3 Q. Of the Frankfort school variety?

4 A. Not necessarily.

5 Q. You know, I forgot to ask you. Can you explain
6 for the record where you received your training and what
7 degrees you currently hold?

8 A. Um, I have a -- I got an English major and
9 anthropology minor at Penn State University in State
10 College. I got a master's of English at Syracuse
11 University and a Ph.D in English at State University of
12 New York in Buffalo.

13 Q. And when -- when did you graduate from SUNY New
14 York?

15 A. Um, 2015.

16 Q. Did you go to work for Penn State after 2015,
17 meaning directly after your --

18 A. Not directly.

19 Q. Where did you go to work first?

20 A. I was an adjunct at several schools in the
21 Philadelphia area. And after which, I had a year-long
22 post-doc to do research at UCLA at the Clark Library.

23 Q. So when did you start at Penn State Abington?

24 A. I believe it was 2018.

Farrell Court Reporting

Matthew Rigilano

Page 37

1 Q. Now, I don't really want you to have to say your
2 specific address for any reason. I don't think that's
3 important. But can you tell me where you live?

4 A. I live in New Jersey currently.

5 Q. What part of New Jersey?

6 A. Southern Jersey.

7 Q. Could you just name the town or community that
8 you live in?

9 A. Pennsauken.

10 Q. And in the neighborhood where you live, do you --
11 do you have neighbors who are black?

12 A. Yes.

13 Q. So would you describe your -- your neighborhood
14 as integrated?

15 MR. SMITH: Objection to form.

16 THE WITNESS: What do you mean by integrated?

17 BY MR. ALLEN:

18 Q. Well, I mean, let me put it this way. What do
19 you understand by integrated, by an integrated
20 neighborhood?

21 A. Oh, I guess, I meant like if it was meant sort of
22 in general as there was an integration of people of
23 different backgrounds or if it like integrated as in it
24 was, like, deliberately integrated.

Farrell Court Reporting

Matthew Rigilano

Page 38

1 Q. Well, I'm assuming there are no laws that either
2 require or forbid integrated by race of a neighborhood in
3 New Jersey.

4 A. Right.

5 Q. -- to your understanding?

6 A. Excuse me. I was thinking if you meant, like,
7 historically speaking, like, an integrated neighbor that
8 was --

9 Q. No. I mean now as --

10 A. Sure.

11 Q. -- you experience -- or 2020, let's say. In
12 2020, was that a multiracial neighborhood that you live
13 in?

14 A. I didn't live there in 2020.

15 Q. When did you first move there?

16 A. Um -- well, actually, wait. When did I move
17 there? I moved there in the middle of 2020. So excuse
18 me, I was wrong.

19 Q. So in the middle of the Covid year?

20 A. Yeah.

21 Q. So at that time you moved there, based on your
22 direct experience, is that a multi-racial neighborhood --

23 A. Yeah.

24 Q. -- that integrates multiple races in a single

Matthew Rigilano

Page 39

1 community?

2 A. Yeah.

3 MR. SMITH: Objection to form.

4 MR. ALLEN: Thank you.

5 I'm gonna introduce as Exhibit 3, I believe.

6 (Exhibit 3 was marked for identification.)

7 BY MR. ALLEN:

8 Q. So Exhibit 3 is the writing program meeting fall
9 2020 to spring 2021. Do you see how the caption says
10 that, and it has a relatively strange typo, 20201. Do you
11 see that?

12 A. I do.

13 Q. Do you remember seeing this document?

14 A. Um, again, not specifically. But in general,
15 yes, I'm familiar with the document.

16 Q. And it's -- you see in the lower right-hand
17 corner, there's a very small page number type marking ZDP
18 02934?

19 A. I do.

20 Q. I'm just gonna represent to you those are what's
21 called Bates numbers. When attorneys are producing
22 documents in litigation to each other, we give them
23 stamped numbers that run continuously through all the
24 documents produced. I may from time to time refer to the

Matthew Rigilano

Page 40

1 Bates numbers. I'm gonna say for the record this is
2 marked ZDP 02934.

3 You understand that this was the agenda for the
4 writing program meetings for the fall 2020 to spring 2021.

5 A. Yes.

6 Q. And that's in that caption there, that's probably
7 just an inadvertent typo, to the best of your knowledge?

8 A. Oh, yes.

9 Q. And here again, there are three meetings laid out
10 each semester, correct?

11 A. Correct.

12 Q. In your experience, did things change between
13 2019-2020 and the new school year 2020-2021 with regard to
14 the program of the writing program meetings?

15 A. Starting in the fall of 2020?

16 Q. Starting with this --

17 A. Yeah.

18 Q. -- writing program meeting in the fall of 2020,
19 yes.

20 A. Yes.

21 Q. And describe those differences?

22 A. Um, I think after the events of the summer of
23 2020 with the murder of George Floyd and the subsequent
24 protests, there was an effort here for sure and across the

Matthew Rigilano

Page 41

1 country to think more explicitly and more deliberately
2 about issues of racism, and that became the topic for the
3 next few semesters.

4 Q. When you say the next few semesters, how long did
5 that emphasis that you've just described last?

6 A. Without reference to the next year's agenda, I
7 can't be certain, but I think until fall 2021, perhaps
8 spring 2022.

9 Q. Okay. And looking at meeting three, this was
10 apparently put together by Stephen Cohen and Lila Naydan.
11 Do you see that?

12 A. Yes.

13 Q. Racism and writing assessment?

14 A. Yes.

15 Q. Did I read that correctly? Who's Stephen Cohen?
16 Can you describe his position as Penn State Abington for
17 the record?

18 A. Yes. At the time, he was a lecturer in the
19 writing program. Also, it's a full-time position.

20 Q. A lecturer is a full-time position? And that's
21 different from a writing instructor, excuse me, a
22 writing --

23 A. Yeah.

24 Q. An associate teaching professor or an assistant

Matthew Rigilano

Page 42

1 teaching professor is different from a lecturer. Is that
2 it?

3 A. Yeah. He was hired, um, I'm not sure how long
4 before, but before Zack and I, and that was when it's
5 possible, but they didn't have the -- the track that I was
6 referring to, the teaching track, and so lecturer was the
7 sort of general stand-in for a full-time, but non-tenure
8 teaching faculty. He is now an assistant teaching
9 professor. He was promoted, so lecturer would be a rung
10 below assistant.

11 Q. Is a lecturer more what we discussed earlier as
12 an adjunct professor?

13 A. It's -- it -- not quite 'cause it still occupies
14 that middle ground. It's -- it's again not, like, paid by
15 the course.

16 Q. It's a full-time equivalent?

17 A. It's full-time, yeah.

18 Q. Okay. So would someone like Stephen Cohen who's
19 a lecturer participate regularly in the writing program
20 meetings?

21 A. Um, by participate as a general member of the
22 meeting, not --

23 Q. A general member of the writing program.

24 A. Yeah. Yes.

Farrell Court Reporting

Matthew Rigilano

Page 43

1 Q. I'm assuming that Stephen Cohen was in the
2 writing program, so let back up. Was he in the writing
3 program?

4 A. Yeah. Yes.

5 Q. Okay. Was he a regular attendant at -- was he a
6 regular participant in them throughout the years you've
7 been there?

8 A. Yeah.

9 Q. And there's also something assigned called White
10 Teachers are a Problem. Do you see that?

11 A. I do.

12 Q. What was the substance of that program?

13 A. Um, it was an YouTube video. It included an
14 interview with Asao Inoue, who is a professor of writing
15 and composition. I don't -- I can't remember where, maybe
16 Arizona, somewhere west. And the -- I believe the
17 interviewer was maybe a graduate student or someone who
18 had a YouTube channel. I don't -- I'm not gonna
19 speculate. I don't remember exactly, and it was about
20 issues of race in education.

21 Q. And were white people or white teachers, excuse
22 me, characterized as a problem in that content that was
23 proscribed through your writing program meeting three?

24 A. I don't really remember the interview itself.

Farrell Court Reporting

Matthew Rigilano

Page 44

1 Q. You don't remember anything about that?

2 A. I remember thinking that -- that the title was
3 clearly provocative, White Teachers are a Problem. But I
4 believe that the substance of the conversation, to the
5 extent that I can remember, had more to do with -- or had
6 less to do with, like, indicting white teachers and more
7 to do with sort of imploring white faculty, who make up
8 the majority of writing instructors in the U.S., to
9 consider race, their race in their course design and
10 interactions in the classroom.

11 Q. Did you feel that you did not consider race as
12 part of your approach to teaching and understand of
13 writing prior to this 2020-2021 academic year?

14 A. I had considered it before, yes.

15 Q. And have you ever heard at Penn State Abington of
16 anyone assigning a course material of the nature black
17 teachers are a problem?

18 A. No.

19 Q. Would you object to such content if someone said
20 let's all get together and read a paper called black
21 people are the problem?

22 MR. SMITH: Objection to form.

23 THE WITNESS: I would, yes.

24 BY MR. ALLEN:

Matthew Rigilano

Page 45

1 Q. And I assume that you consider yourself as far as
2 possible not to be racist, correct?

3 A. Correct.

4 Q. And by that, I mean that you would not judge
5 someone by stereotypes based on skin color?

6 A. Correct.

7 Q. And would you consider something assigned black
8 people are the problem to be racist in that regard?

9 MR. SMITH: Objection to form.

10 THE WITNESS: Um, yes.

11 BY MR. ALLEN:

12 Q. Was there any -- setting aside anything said by
13 my client, Zack De Piero, was there anything in your
14 experience said objecting to White Teachers Are a Problem
15 as being racist?

16 A. By members of the writing program?

17 Q. Correct, except for Zack De Piero.

18 A. No, I don't recall any other objections.

19 Q. And you gave in spring of 2021, meeting number
20 one, The Politics and Participation and Conversation. Did
21 I read that correctly?

22 A. Yes.

23 Q. That was held in January of 2021. And it lists
24 you as the leader of that discussion?

Farrell Court Reporting

Matthew Rigilano

Page 46

1 A. Uh-huh.

2 Q. Can you just explain for the record what you
3 discussed in the writing program meeting?

4 A. Sure. Um, I think the substance of it or, shall
5 I say, the motivation of it was I think primarily like our
6 recent experiences on Zoom where class -- where student
7 participation was a major problem for many people for a
8 bunch of fairly obvious reasons, and so the discussion was
9 meant to get us to think about, like, how do we get
10 students to participate. But also, the reason it's called
11 like sort of the politics of participation is to some
12 extent like trying to think about maybe like the
13 sociological and cultural reasons why students from
14 different backgrounds may or may not participate. Yeah.

15 Q. Did you have any particular focus on white people
16 being the problem in that meeting?

17 A. No.

18 Q. Were you -- were you required at Penn State --
19 I'm done with Exhibit No. 3, thank you, for now at least.

20 I want to ask you more generally back in this
21 time period 2020 to 2022, let's say. Were you required to
22 attend training modules, any kind of sessions on
23 diversity, equity and inclusion?

24 A. No.

Matthew Rigilano

Page 47

1 Q. Did you attend any?

2 A. I didn't. I went to some talks that would have
3 been kind of under the sort of the aegis of DEI, not
4 remembering who sponsored them specifically. But we -- we
5 invited Asao Inoue to give a talk. It was on Zoom. And
6 there was another one, I can't remember the name of the
7 speaker, but I attended those two. But in terms of, like,
8 the broader sessions offered by different programs in
9 different levels of, like, the administration, um, I
10 didn't attend many. I mean, this is neither here nor
11 there. I had a very small child also, born at the end of
12 2019, so --

13 Q. Congratulations. Your only child now?

14 A. Yes.

15 Q. So he or she must be what, five, now, six?

16 A. Four.

17 Q. How nice. Did you keep a copy of any of those
18 DEI materials in the talks you did go to?

19 A. Um, if -- no. I mean, typically, the talks
20 wouldn't have -- they were all on Zoom at this time.
21 There weren't handouts and such. I -- I have the e-mails
22 record, of some of which I procured or the ones I could
23 find, yeah.

24 Q. And I'm glad you pronounced his name Asao Inoue?

Matthew Rigilano

Page 48

1 A. I believe. I've always said Asao Inoue, Inoue.

2 Q. Inoue? Well, since he's not here to correct
3 me --

4 A. I could --

5 Q. -- we'll use your pronunciation. I've wondered
6 that myself, and I've not been able to figure it out from
7 various things I looked up.

8 Were you aware of any initiatives in that time
9 frame, 2020-2022 roughly to reorient Penn State University
10 Abington campus towards some kind of diversity, equity and
11 inclusion initiative?

12 A. Um, not specifically. I think -- I don't
13 remember the timeline. I believe we already had an office
14 of DEI and prior to 2020.

15 Q. Do you know who would have led that office?

16 A. May I?

17 Q. Please. Just let the record show -- we've got a
18 video, but he's -- you're referring to the notice of
19 deposition?

20 A. Yes. I think it's Annisa Smith.

21 Q. Annisa Smith?

22 A. Yes. But then again, like, that could have --
23 she might have recently taken the post. I can't remember
24 the timeline.

Matthew Rigilano

Page 49

1 Q. Are you familiar with an employee at the time of
2 Penn State Abington or Penn State more generally named A
3 W?

4 A. I don't know who that is.

5 Q. So you don't know what her position was at the
6 time, A W?

7 A. No.

8 Q. Did you participate in any initiatives to
9 increase the presence of DEI on campus?

10 A. Aside from attending the -- the speakers, not
11 really. And the program meetings, of course.

12 Q. In your experience, did the program meetings
13 after 2020 -- we just compared 2019-2020 and the school
14 year 2020-2021, right? And in that transition, did you
15 find thereafter they were more focused on things that have
16 loosely been characterized as diversity, equity and
17 inclusion?

18 A. Beginning with the semester of fall 2020, yes.

19 Q. Thank you. So had you ever heard of an ad hoc
20 committee on diversity, equity and inclusion?

21 A. This is a senate committee?

22 Q. Well, I'm asking you.

23 A. Oh. Yes. Um, I wasn't a member of the faculty
24 senate at this time. But I believe yes, there was an

Matthew Rigilano

Page 50

1 ongoing sort of, yeah, committee probably formulated
2 around that time. I'm not exactly sure what their mission
3 specifically was, I think to draft something.

4 Q. So you were never shared any materials or
5 documents from the ad hoc committee on diversity, equity
6 and inclusion?

7 A. Oh, I'm sure they sent something through e-mails
8 and whatever.

9 MR. ALLEN: I'm just gonna share with you a
10 document I'm gonna mark as Exhibit 4.

11 THE WITNESS: Can I grab a bottle of water real
12 quick?

13 MR. ALLEN: Oh, absolutely. Should we go off the
14 record, please?

15 VIDEOGRAPHER: Off the record, 11:10.

16 (A break was held.)

17 VIDEOGRAPHER: We're back on the record, 11:11.

18 (Exhibit 4 was marked for identification.)

19 BY MR. ALLEN:

20 Q. Thank you. So I just marked as Exhibit 4 a
21 document which is Bates stamped ZDP 02247 on its first
22 page. It's captioned 2020-2021 Ad Hoc Committee on
23 Diversity, Equity and Inclusion year end draft report --
24 or let me put it year end report draft. Did I read that

Matthew Rigilano

Page 51

1 correctly?

2 A. Yeah.

3 Q. And I just wanted to skip down to the committee
4 members. Do you recognize any committee members that were
5 part of the writing program?

6 A. Yes. G A, Lila Naydan, Jimmy Pack.

7 Q. And Jimmy Pack was the individual you had
8 identified earlier as skipping all the writing program
9 meetings?

10 A. I think yes. I mean, um, to be clear, he has
11 attended them, like, very periodically, mostly at the
12 first year or two of my starting there, but then less so.

13 Q. Do you know --

14 A. It's not -- it's not like I never saw him at one,
15 but he basically doesn't go.

16 Q. Do you know of any reason why he doesn't go?

17 A. Um, not really.

18 Q. And then there's Anissa Smith as part of the
19 staff. That's the woman you had referred to earlier as
20 the DEI director at Penn State Abington?

21 A. If I --

22 MR. SMITH: Objection to form.

23 THE WITNESS: -- remember correctly, I think that
24 is.

Matthew Rigilano

Page 52

1 BY MR. ALLEN:

2 Q. Okay. I just since -- now, let me clarify. You
3 didn't participate in this committee?

4 A. I did not.

5 Q. Do you remember ever getting this report draft?

6 A. Um, I don't. I -- I do remember, like,
7 periodically getting e-mail updates through the list serv
8 of things going on with the committee. I don't know if
9 this was sent as a PDF or maybe it was a link that was
10 provided. Um, I didn't -- I didn't read it. I feel --

11 Q. I'm also going to direct your attention -- I
12 don't mean to interrupt you, but you'll see that they're
13 double-sided.

14 A. Ah.

15 Q. So I just don't want you to be confused.

16 A. Sure.

17 Q. Please, if at any time I'm asking you to comment
18 on a document you haven't had time to examine, just tell
19 me. It's not my purpose to rush you through a document,
20 but I don't -- I don't want to spend time reading the
21 whole document, since you already testified that you
22 didn't get it at the time, and --

23 A. Or didn't read it at the time.

24 Q. Were you ever interviewed as part of this

Matthew Rigilano

Page 53

1 committee's work or anything of that nature?

2 A. No.

3 Q. Okay. I just had a few questions about the
4 report draft. You'll see on the bottom, there's a page
5 ZDP 2249. Could you just, you know, fast forward to that
6 page? There's a caption called Rationale Abington?

7 A. Okay.

8 Q. And I'm just gonna direct you to the second
9 sentence of the first paragraph there. It says Abington
10 continues to serve a racially, culturally and ethnically
11 diverse population, with 50 percent of students who
12 identify as minorities and 40 percent who identify as
13 first generation college students. While perhaps
14 comparatively diverse to other institutions, Abington
15 still has a majority white staff at 59 percent and faculty
16 64 percent.

17 Did I read that correctly?

18 A. Yes.

19 Q. Is it your understanding, then, that there is --
20 from these statistics that there's discrimination at
21 Abington?

22 MR. SMITH: Objection to form.

23 THE WITNESS: Um, no.

24 BY MR. ALLEN:

Matthew Rigilano

Page 54

1 Q. Should there be more white staff?

2 MR. SMITH: Objection to form.

3 THE WITNESS: Um, what do you mean by should?

4 Like according to what idea?

5 BY MR. ALLEN:

6 Q. At Penn State Abington, in your understanding and
7 experience, is there an initiative to increase the
8 proportion of faculty who are not white?

9 A. Yes. I think, um, in -- in general, nonspecific
10 terms, I think there is the idea that, um, because of the
11 sort of the disparity that you mention in the numbers that
12 it would be a good idea to, you know, make sure that we
13 are attending to diversity in hiring practices. I
14 don't -- I'm not familiar with any quota or anything of
15 that nature that Abington has in mind.

16 Q. Is there any general initiative that you're aware
17 of to decrease the portion of faculty that are of any
18 other race, to your knowledge?

19 A. No, not to my knowledge.

20 Q. Is there an initiative to your knowledge to
21 increase the number of faculty who are black?

22 A. I don't know if I've heard that specifically.
23 Typically, the idea of attending to diversity is usually
24 articulated in those terms. So a list such as you

Matthew Rigilano

Page 55

1 mentioned like racially, culturally and ethnically diverse
2 faculty would be, you know, sought.

3 Q. And in fact, it says in the second sentence of
4 the second paragraph there first, because we recognize the
5 many diverse perspectives that students, faculty and staff
6 can bring to the campus community, therefore, we believe
7 that it is important to hire faculty and staff who reflect
8 the student body. Did I read that right?

9 A. Yeah.

10 Q. And then second, as a community of educators
11 dedicated to ongoing development, we need an array of
12 diverse perspectives in terms of training programs. Did I
13 read that right?

14 A. Yeah.

15 Q. Third, it is important to teach diverse
16 perspectives within the curriculum through course content.
17 And finally, because we believe that diversity is not
18 static, it is important to make sure that these
19 initiatives are sustained and available over time. Did I
20 read that right?

21 A. Yeah.

22 Q. So is it -- is it your understanding that if a
23 report of the Penn State Abington is reporting that 50
24 percent of students identify as minorities that the goal

Matthew Rigilano

Page 56

1 would be to have 50 percent of the faculty and staff be
2 minority?

3 MR. SMITH: Objection to form.

4 THE WITNESS: Not based on the -- the paragraph
5 that you just read. I mean, the -- I think the line there
6 is we believe that it is important to hire faculty and
7 staff who reflect the student body. Um, I guess that
8 could be interpreted to mean reflect in terms of precise
9 numbers, but it could also mean just more generally
10 reflect those diverse perspectives.

11 BY MR. ALLEN:

12 Q. And --

13 A. I don't know what -- yeah, what they --

14 Q. How do you understand that conversation at Penn
15 State Abington when it's supposed to reflect the diversity
16 of the student body? What diversity is it supposed to
17 reflect?

18 MR. SMITH: Objection to form.

19 THE WITNESS: I'm just reading over it again.

20 BY MR. ALLEN:

21 Q. Please.

22 A. Right. I understand it to mean kind of just
23 generally that we have a diverse student body and that we
24 should strive to have a diverse faculty that -- that

Matthew Rigilano

Page 57

1 reflects it. I'm not -- I'm not sure that it would mean
2 specifically that we need to achieve a particular number.
3 I don't know --

4 Q. Sure.

5 A. -- if that works or if that's desirable. I think
6 it says a general orientation.

7 Q. Uh-huh.

8 A. I don't know what that would look like in terms
9 of hiring committees, for instance.

10 Q. Uh-huh.

11 A. How this would translate other than the fact that
12 I think Penn State in general beyond this document has a
13 kind of university-wide commitment to, you know, attending
14 to issues of diversity in the hiring practice.

15 Q. That kind of feeds into what I wanted to ask you
16 next is I know you hadn't seen this document before today,
17 and I'm not trying to suggest you had. But this is
18 certainly not the first time that you've encountered the
19 idea of the diversification of Penn State Abington's
20 faculty and staff at Penn State Abington, correct?

21 A. That's correct.

22 Q. And so with regard to your experience of this
23 initiative to diversify the employees of Penn State
24 Abington, I guess what I'm trying to get at with my

Matthew Rigilano

Page 58

1 question is how does Penn State Abington define diversity?

2 What diversity are they interested in, Professor Rigilano?

3 MR. SMITH: Objection to form.

4 BY MR. ALLEN:

5 Q. Rigilano, excuse me.

6 MR. SMITH: Just to clarify, are you asking him

7 Penn State administration's view, his view, writing

8 program's view?

9 BY MR. ALLEN:

10 Q. Based on your understanding, the institution Penn
11 State Abington.

12 A. Yeah.

13 Q. What are they driving -- what is Penn State
14 Abington driving for when they want to diversify the
15 faculty?

16 MR. SMITH: Same objection.

17 THE WITNESS: Um --

18 MR. ALLEN: It's preserved for the record.

19 THE WITNESS: Yeah. I mean, I think the triad
20 there of racial, culturally and ethnically probably is the
21 central. There's also this other list, right, of diverse
22 identities across genders, sexual orientations, home
23 languages, religion. Um, you know what? I feel like I
24 see this kind of rhetoric in different ways. I don't

Matthew Rigilano

Page 59

1 think I see a particular stress.

2 BY MR. ALLEN:

3 Q. Uh-huh.

4 A. Um, I feel like I probably see class difference
5 less than all these other ones. But otherwise, um, I
6 think it's, again, like it's kind of like a nebulous
7 thing. I don't, like, remember specific meetings that --
8 yeah.

9 Q. Do you ever recall any emphasis on the diversity
10 of critical viewpoints?

11 A. Not as such. I think often times, critical
12 viewpoints are linked that the fact that there would be
13 different critical viewpoints probably connected to these
14 diverse identities.

15 Q. And if you skip forward to the next page, I
16 believe it's ZDP 02250, you see how there's a number three
17 under the heading hiring recommendations?

18 A. Yes.

19 Q. And the committee is providing recommendations to
20 the chancellor in that number three, correct?

21 A. Yeah. I'll take a second to read this. Okay?

22 Q. Have you had a chance to read that?

23 A. Yeah.

24 Q. So under number three, they're recommending to

Matthew Rigilano

Page 60

1 the chancellor meeting a baseline for full-time hiring
2 goals based on historically and continuous marginalized
3 intersectional identities, most notably race and
4 ethnicity, but also gender identity and expression, sexual
5 orientation, ability, et cetera. Did I read that
6 correctly?

7 A. Yeah.

8 MR. SMITH: Objection to form.

9 BY MR. ALLEN:

10 Q. What -- what -- what do you understand
11 intersectional identities to mean?

12 A. Um, so the idea being that one's identity is
13 composed of a multitude of different attributes. So for
14 instance, you could be a, you know, a -- a black, you
15 know, queer woman, and those two things would be important
16 part of your identity.

17 Q. Can I suggest you mean three things; black,
18 woman --

19 A. Excuse me. Yes.

20 Q. -- queer, right? So those ascribed identities,
21 correct?

22 A. Yeah.

23 Q. Do you know if this was implemented?

24 MR. SMITH: Objection to form?

Matthew Rigilano

Page 61

1 THE WITNESS: I don't know.

2 BY MR. ALLEN:

3 Q. At number -- under number five, it also if you
4 skip to the last sentence that begins on that page, it
5 says we recommend that BiPOC faculty serving on search
6 committees be compensated for their time e.g. through a
7 course release or be relieved of certain other service
8 responsibilities (University of Colorado Boulder.)

9 Did I read that correctly?

10 A. Yes.

11 Q. And I think that's usually pronounced BiPOC,
12 right? What does that stand for?

13 A. I believe it stands for Biracial, Indigenous
14 People of Color. I could be wrong about --

15 Q. Does it also -- could it also stand for Black,
16 Indigenous and People of Color?

17 MR. SMITH: Objection to form.

18 THE WITNESS: Yes. I think you're right.

19 BY MR. ALLEN:

20 Q. Thank you. So this is a recommendation to pay
21 people on the basis of their race more, relieve them of
22 courses on account of their race and et cetera, correct?

23 MR. SMITH: Objection to form.

24 THE WITNESS: Could you mind if I read the whole

Matthew Rigilano

Page 62

1 item number five?

2 BY MR. ALLEN:

3 Q. Please.

4 A. Okay. Could you repeat the question?

5 Q. Sure. You understand this is recommending that

6 BiPOC faculty be paid for their time through course

7 releases or otherwise in ways that people who are not

8 BiPOC would not be entitled to, correct?

9 MR. SMITH: Objection to form.

10 THE WITNESS: That seems to be what this is
11 suggesting.

12 BY MR. ALLEN:

13 Q. Do you know if that was implemented?

14 A. I don't know. Not to my knowledge.

15 Q. Incidentally, in your writing program faculty,
16 are there any faculty who are not white?

17 A. Yes.

18 Q. And how many?

19 A. Um, we are mostly white. I can think of Grace,
20 who identifies as Asian American, I believe. Um, but in
21 the writing program, I think that's pretty much it.

22 Q. I'm sorry. I should just ask. Do you consider
23 yourself white?

24 A. Yes.

Farrell Court Reporting

Matthew Rigilano

Page 63

1 Q. It also says under number six that the college is
2 recommended to revise the current search process checklist
3 and make it standard hiring form to be completed by all
4 search committee members. The revised search process
5 checklist should consist of best diversity, equity and
6 inclusion DEI practices for each stage of the search
7 process.

8 Did I read that correctly?

9 A. Yeah.

10 Q. Go ahead and read all number six.

11 A. Sure. Okay.

12 Q. Are you aware that this was implemented or not?

13 A. I don't -- I don't know. The reason I don't know
14 is -- or the reason I hesitated is I was on a hiring
15 committee.

16 Q. Uh-huh.

17 A. But I -- I wasn't the chair of the committee, and
18 I don't recall if this was or was not yet implemented.

19 Q. I -- I was gonna ask you. Have you been on a
20 search committee?

21 A. One, yeah?

22 Q. One? When was that?

23 A. Um, fall of 2022.

24 Q. In that search committee, was DEI discussed in

Matthew Rigilano

Page 64

1 terms of evaluating candidates?

2 A. Um, not that I recall.

3 Q. When you were promoted, were you required to
4 write a DEI statement of any kind?

5 A. I was not.

6 Q. Have you ever been required to write out a DEI
7 statement?

8 A. Um, not by Penn State Abington. I've applied to
9 many jobs beforehand, and it's sort of typical in academic
10 hiring to provide a diversity statement.

11 Q. And just to close the loop, not by Penn State
12 Abington. Did any institutional agency associated with
13 Penn State writ large, which is many universities, ever
14 require you to do a diversity, equity and inclusion
15 statement?

16 A. I'm trying to remember if I had to write one for
17 as I applied to Penn State Abington, like initially. Um,
18 I don't remember if that was part of it or not.

19 Q. If such a document existed, do you know if that
20 would be in your personnel file?

21 A. I'm not sure what they keep.

22 Q. I think I'll set that aside for now. Thank you
23 for reviewing that.

24 A. Yeah.

Farrell Court Reporting

Matthew Rigilano

Page 65

1 Q. Um, I just wanted to ask you some general
2 questions. Can you explain to the court what you
3 understand by antiracism?

4 A. It's a difficult question because there are sort
5 of I think competing definitions that have gained
6 popularity that are attached to this or that individual,
7 um, so like I don't think I could say what the general
8 tendency might be. But in my -- in my understanding,
9 antiracism is a -- an orientation, a position, a sort of
10 school of thought that, um, seeks to understand and combat
11 racism.

12 Q. And can we agree that -- I think we already did,
13 but racism means imposing stereotypes to the disadvantage
14 of someone just based on the color of their skin?

15 MR. SMITH: Objection to form.

16 THE WITNESS: I think that's one component of
17 racism, not that it's necessarily the whole -- the whole
18 thing.

19 BY MR. ALLEN:

20 Q. What are some other things that you would include
21 as racism?

22 A. I know that one aspect of antiracist sort of
23 theory and sort of foregrounds the systemic nature of
24 racism, right? So the idea that it's not necessarily a

Matthew Rigilano

Page 66

1 matter of kind of like, personal animus or just
2 stereotypes, for instance, but the way in which
3 institutions, historical practices, et cetera, the way in
4 which, you know, power is -- is wielded in any racist way.

5 Q. And so let's bring this to your topic of writing
6 and teaching the English language. What is meant by the
7 phrase white language supremacy?

8 A. I think that's often used to describe the way in
9 which in writing studies and in I think other sort of
10 programs in the university in general, um, there's an
11 assumption of what a -- what the correct standard is to
12 write, what's often called standard English.

13 Q. Uh-huh.

14 A. And it is -- that -- that standard is derived
15 very often from the kind of habits and practices of
16 typically sort of white speakers. So for instance, it's
17 the conventions of white English are different from the
18 conventions of say, you know, colloquial black English.

19 Q. Are you familiar with the phrase African-American
20 English?

21 A. Yeah, or sometimes African-American Vernacular,
22 AAV.

23 Q. I think there are many -- like everything,
24 there's so many delightful acronyms all over the place,

Farrell Court Reporting

Matthew Rigilano

Page 67

1 right, and there are no exception. So AAE, African-
2 American English, or AAVE and so forth, right?

3 Can we agree that that usually refers to a
4 dialect of the English language predominantly spoken by
5 African-Americans?

6 A. Yeah. Yes.

7 Q. And to some extent, would you agree that it has
8 its own distinctive grammar, its own distinctive meaning
9 of words, vocabulary certain?

10 A. Yes.

11 Q. And you have just made a distinction between that
12 and, say, standard English, correct?

13 A. Yes.

14 Q. And what is the language spoken by the majority
15 of Americans in your view as a writing professor?

16 A. What kind of English?

17 Q. Yeah.

18 A. It's difficult to answer. Standard English is
19 typically, like, a writing convention or like it usually
20 designates not so much like just habits of speak, but
21 writing conventions, many of which like, you know, people
22 don't actually use in spoken language, right? So, you
23 know, little, like, grammatical quirks, ways of, I don't
24 know, using prepositions, things like that you might mark

Matthew Rigilano

Page 68

1 in a paper, but would never think to correct someone or to
2 in spoken language. So it's hard to say whether the
3 majority of -- of those in the U.S. speak standard
4 English. That's -- that's a tough assumption.

5 Q. And you -- I'm sorry. I didn't understand your
6 answer. They do or they don't -- the vast majority of
7 Americans do or do not speak standard English?

8 A. To my understanding, standard English is --
9 refers to a set of writing conventions, and so I don't --
10 I'm not sure I would say that people speak standard
11 English.

12 Q. Would you say these writing conventions that
13 you're referring to as standard English are adopted by the
14 vast majority of Americans?

15 A. Depends on education, very often. Insofar as
16 standard English still is the dominant way that I think
17 educators at many levels teach, you know, English and
18 writing, then that would -- then that would make -- I
19 would agree to that, yeah.

20 Q. You would never say that it's basically academic
21 prose, though, would you?

22 A. No. No.

23 Q. God forbid, right?

24 A. Yeah. I would say academic prose, you know --

Farrell Court Reporting

Matthew Rigilano

Page 69

1 well, one, it varies by discipline, you know,
2 significantly. Um, I would say, you know, some standard
3 English in my mind is usually something like, you know,
4 what do you read in The New York Times.

5 Q. Okay.

6 A. What are the sort of grammatical or
7 phraseological conventions that you see in, like, the
8 paper of record.

9 Q. Let me ask this a different way. Is standard
10 English in your expertise and view as a writing teacher
11 and Ph.D the language of commerce in the United States?

12 MR. SMITH: Objection to form.

13 THE WITNESS: Um, traditionally yes, absolutely.
14 I feel as if it's -- that's changing, like, depending on
15 the business sector, I don't know if that's totally the
16 case. But in general and most of the time, yes.

17 BY MR. ALLEN:

18 Q. So is teaching Black students the rules of
19 composition and grammar that are traditionally accepted as
20 standard English racist?

21 MR. SMITH: Objection to form.

22 THE WITNESS: No.

23 BY MR. ALLEN:

24 Q. Do you know the African-American public

Matthew Rigilano

Page 70

1 intellectual John McWhorter?

2 A. To some extent, yeah.

3 Q. Ever heard him speak?

4 A. Um, no. I've read some of his work online, but I
5 don't -- I think I haven't heard him speak.

6 Q. I'm gonna represent to you that he has described
7 himself on one occasion as speaking with a Connecticut
8 insurance salesman's accent.

9 A. Okay. I can imagine that. Yeah.

10 Q. You -- you would never argue as a -- as a scholar
11 and Ph.D of -- a student of the English language that that
12 makes him any less black, would you?

13 A. No.

14 Q. That doesn't make him white somehow, does it?

15 A. No.

16 Q. The fact that he grew up speaking in that way,
17 does that make him a victim of systemic racism?

18 MR. SMITH: Objection to form.

19 THE WITNESS: The way -- the fact that he grew up
20 speaking like a Connecticut insurance salesman, does that
21 make him you said less of a victim? Can you say it one
22 more time?

23 BY MR. ALLEN:

24 Q. The victim of -- of white supremacy.

Matthew Rigilano

Page 71

1 A. Um, is the idea --

2 Q. Forget about John McWhorter.

3 A. Yeah.

4 Q. You would -- you would acknowledge and have
5 perhaps met individuals who are Black but who --

6 A. Right.

7 Q. -- speak standard American English --

8 A. Sure.

9 Q. -- with great proficiency and skill?

10 A. Yeah.

11 Q. I'm sure you've read James Baldwin, correct?

12 A. Yeah. Yes.

13 Q. And you would never say, I would assume, that the
14 beauty of James Baldwin's prose makes him the victim of
15 white supremacy because it was written in standard
16 English?

17 A. Oh, right. Right.

18 MR. SMITH: Objection to form.

19 THE WITNESS: I would not say that, no.

20 BY MR. ALLEN:

21 Q. And I assume you would say the same for Maya
22 Angelou, correct? In fact, these are masters of the
23 English language, are they not?

24 A. Fair.

Farrell Court Reporting

Matthew Rigilano

Page 72

1 Q. So explain to me what black linguistic justice
2 is.

3 A. Um, this is not a concept that I have great
4 familiarity with. I've heard the term and I know that
5 the -- there were documents circulated at one time dealing
6 with that theme, so I can't speak authoritatively. My
7 understanding is that the idea I think is that for many
8 Black students entering the writing classroom, they're in
9 certain circumstances, like, they are -- like either
10 through assessment or through the instructor kind of told
11 to communicate in a particular way, right, to adopt the
12 conventions of standard English. And I think the theory
13 of the term you mentioned is that -- that it's an
14 injustice to suppress this sort of, you know, the mother
15 tongue or sort of more indigenous or first language that
16 the student might have, right? That -- that somehow, the
17 teaching or the imposition of standard English entails the
18 suppression of what for many students might be seen as a
19 key part of their identity.

20 Q. And is it -- is it your understanding that
21 learning standard American English requires a Black
22 student to give up their familiarity with African-American
23 English?

24 A. I think this is -- that's the -- one of the major

Matthew Rigilano

Page 73

1 points of -- of sort of tension in the -- in higher
2 education right now, one of the things being debated. I
3 think for a long time, there was a, you know, very sort of
4 from my understanding, a strict requirement to adopt those
5 conventions and to, you know, leave everything else at the
6 door.

7 I think in the last couple of decades, there's
8 been -- there's been a pedagogical movement that would say
9 that students' experience, like, with language, with
10 literacy are important tools to leverage in the writing
11 classroom and that the goal of writing instruction is not
12 to, like, impose one set of conventions, but rather to --
13 and I believe this -- to give a student rhetorical
14 awareness so that they understand, like, you know, what
15 languages and what tools do you use in different kinds of
16 context, right?

17 What's gonna work if you're -- if you're applying
18 for a job with The New York Times, what conventions do you
19 want to adopt to speak the language, you know, that will
20 ensure your success there? There are obviously contexts
21 where hybridity is accepted or encouraged. There are
22 contexts where standard English is maybe not habitually
23 used and would get you less of a good response. Like, say
24 you're a politician dealing to different kinds of audience

Farrell Court Reporting

Matthew Rigilano

Page 74

1 members. And so anyway, the long -- the answer to the
2 question would be that standard English I think is very
3 often taught, but as, like, a particular mode as opposed
4 to an imposition.

5 Q. Should a Filipino first-generation immigrant who
6 speaks maybe Tagalog and Spanish and English at most as a
7 second language be forced to learn African-American
8 English so he can interact with black Americans?

9 MR. SMITH: Objection to form.

10 THE WITNESS: If that's what the student wants to
11 do.

12 BY MR. ALLEN:

13 Q. Didn't ask what they wanted.

14 A. Oh, oh.

15 Q. I said would you teach -- let's put it this way.

16 A. Oh, okay. Sure. Sure.

17 Q. I'm sure -- we just read that Abington is -- it
18 seems to be proud of itself as a very diversified student
19 body by race and ethnic origins, right?

20 A. Uh-huh.

21 Q. So I'm sure you've had people like the
22 hypothetical student I've just described?

23 A. Yeah.

24 Q. Someone who's a first-generation immigrant, may

Matthew Rigilano

Page 75

1 know multiple languages, but English is a second language.

2 A. Right. Right.

3 Q. And one thing we can presume, that they don't

4 have much familiarity with African-American English.

5 Should they be -- should they be taught African-American

6 English so they can interact with African Americans in the

7 United States?

8 MR. SMITH: Objection to form.

9 BY MR. ALLEN:

10 Q. I'm asking you as a writing professor --

11 A. Yeah.

12 Q. -- at Penn State.

13 A. It's an interesting question. I can't say I've

14 considered it much. I mean, my first response would just

15 be I don't see anything particularly problematic with

16 that. I think, you know, the -- one would have to balance

17 it against just the general outcomes of the course and

18 what its utility is meant to be. Right? If we're -- if

19 we want students to, you know -- you mentioned like the

20 language of commerce. You know, if we want students to be

21 able to be competitive on the job market or to do this or

22 that or to be on their -- for instance, in their

23 discipline or in graduate studies, then that would

24 probably have less purchase. That would be less pertinent

Farrell Court Reporting

Matthew Rigilano

Page 76

1 like, you know, as I prioritize the demands of the class.
2 But I also think it's an interesting idea. I mean, I
3 teach a wide variety of texts, not all of which is what
4 you would call standard English, to give students from
5 different backgrounds different models of rhetorical
6 expertise.

7 Q. Let me switch to a different topic. Can you
8 describe what you understand as white privilege?

9 A. Um, yes. The idea is that if you are white in
10 America, you are accorded privileges that non-white people
11 aren't.

12 Q. Is that how you understood it as purveyed by Penn
13 State?

14 A. I'm not sure I have a clear idea of how Penn
15 State sort of defines it.

16 Q. Has it been discussed at Penn State since you've
17 been there?

18 A. Yes.

19 Q. Widely discussed?

20 A. Since 2020 recurrently.

21 Q. Has it been discussed repeatedly by your program
22 coordinator of writing, Liliana Naydan?

23 A. Um, I don't know about by her. But certainly,
24 the materials that we were addressing as listed on the

Matthew Rigilano

Page 77

1 agenda, many of which -- not -- not all, but many of which
2 deal with white privilege or some -- or some version of
3 the concept, if not in name.

4 Q. And to -- the close the loop, is it safe to say
5 that she promoted this engagement with concepts like white
6 privilege?

7 A. Promoted the engagement? Yes.

8 Q. Was there any discussion of black privilege at
9 Penn State?

10 A. Not to my knowledge.

11 Q. Any discussion of Asian privilege?

12 A. No.

13 Q. Jewish privilege?

14 A. No.

15 Q. Just white privilege, right?

16 A. Primarily, yes.

17 Q. Now, I assume at Penn State Abington, given the
18 nature of the campus described in the DEI draft report
19 that we saw earlier, which was Exhibit 4, that you have a
20 great variety of white students as well?

21 A. Yeah.

22 Q. And I just want to know your experience. Are
23 they white students who predominately come from extremely
24 wealthy backgrounds, in your experience?

Farrell Court Reporting

Matthew Rigilano

Page 78

1 A. I'm sure there are statistics on this that have
2 been collected by administrators. But in my experience,
3 most of the white students that I've had are -- well,
4 first of all, most are regional either sort of to the
5 county or sort of the tri-state area and most are what I
6 would call middle class.

7 Q. Do you consider them privileged simply because
8 they're white?

9 A. In some respects, not --

10 Q. You --

11 A. -- in all.

12 Q. I'm sorry. Go ahead.

13 A. Not in all respects. I definitely have had white
14 students that were -- that had financial problems and
15 struggled in terms of tuition, purchasing books and what
16 have you, which is clearly not a privilege.

17 Q. Let me put it differently. In your experience
18 teaching the white students of Penn State Abington in your
19 writing classes, do you consider them automatically
20 privileged because they're white?

21 A. I think being white in America confers certain
22 privileges regarding of other disadvantages or, you know,
23 other ways in which you might be unprivileged.

24 Q. And I assume you've also had a great number of

Matthew Rigilano

Page 79

1 black students in your classes who come to learn writing?

2 A. Correct.

3 Q. Do you consider them automatically disadvantaged?

4 MR. SMITH: Objection to form.

5 THE WITNESS: Not automatically.

6 BY MR. ALLEN:

7 Q. And I -- do you consider any other race but your
8 white students to be automatically enjoying some form of
9 privilege as you described it earlier?

10 A. Um, well, I mean like with my wealthy students
11 enjoy privilege, but that is cross racial and again, only
12 in the American context. We have, for instance, many
13 international students, so I can't speak to their relative
14 privileges in their respective countries.

15 MR. SMITH: Would you mind not right now, but
16 take a bathroom break?

17 MR. ALLEN: I was gonna say, like I was gonna try
18 to think if I can get to something. Let's go --

19 MR. SMITH: Whatever's a good time for you.

20 MR. ALLEN: Can we go off the record?

21 VIDEOGRAPHER: Off the record, 11:53.

22 (A short break was held.)

23 VIDEOGRAPHER: We're back on the record, 12:03.

24 BY MR. ALLEN:

Farrell Court Reporting

Matthew Rigilano

Page 80

1 Q. Professor Rigilano, did you yourself participate
2 in any initiatives to promote black linguistic justice on
3 campus?

4 A. No.

5 MR. ALLEN: I'm going to introduce as Exhibit 5 a
6 document that has the Bates stamp on the first page ZDP
7 02419, and it's captioned -- it's a Gmail captioned
8 Liliana Marika Naydan writing program Penn State Abington.

9 (Exhibit 5 was marked for identification.)

10 BY MR. ALLEN:

11 Q. So just a question, would you have received this
12 e-mail?

13 A. Yes.

14 Q. And I don't see your e-mail address in the first,
15 you know, heading. Is there a listserv or something of
16 that nature that's identified there that you would have
17 been a party to?

18 A. Yes. This was sent through Canvas, which is
19 our -- our sort of learning platform.

20 Q. I see. And is that a sort of hub for sending
21 messages to the faculty or --

22 A. Often, yes, we'd be part of like a group on
23 there.

24 Q. Right. And this is dated August 3, 2020, right?

Matthew Rigilano

Page 81

1 A. Yeah.

2 Q. And so its headline black linguistic justice, you
3 remember reading about this at the time?

4 A. Vaguely.

5 Q. And she includes a link. We'll get to that in a
6 second. And then in the sentence right after the link,
7 she characterizes the content there as calling on all of
8 us to engage in, quote, antiracist work through the thorny
9 process of reviewing and revising our teaching materials
10 and our perspectives, right?

11 A. Uh-huh.

12 Q. And she wants to assure in the last -- the last
13 part of the compound sentence that ends that paragraph, to
14 assure that all students see that white supremacy
15 manifests itself in language and in writing pedagogy,
16 right?

17 A. Uh-huh. Yes.

18 Q. And then, I'm just gonna turn your attention to
19 the next page. And do you see at the bottom, there's a
20 stamp of the URL address?

21 A. Yes.

22 Q. Is that the same one that Liliana Naydan was
23 referring to in her -- in her e-mail?

24 A. Yes.

Matthew Rigilano

Page 82

1 Q. And this appears to be material -- and I'm just
2 gonna represent to you that this was material captured
3 from that very same website.

4 A. Uh-huh.

5 Q. And it's captioned this ain't another statement,
6 this is a demand for black linguistic justice. And it's
7 subheading Conference on College Composition and
8 Communication, July 2020. Did I read that right?

9 A. Yes.

10 Q. Can you explain for the court what the Conference
11 on College Composition and Communication is?

12 A. Um, the -- the 4C's, as it is sometimes referred
13 to, is a professional organization. They have annual
14 conferences. People join that are part of the writing and
15 composition world.

16 Q. And are you a member of the CCCC?

17 A. I have never been a member of the 4C's.

18 Q. As a self-avowed Marxist, have you lobbied to
19 replace the last letter with P?

20 A. Understood. If I was a member, I'm sure I
21 could --

22 Q. Obviously, it's not a serious question, so we can
23 strike that question.

24 Did you read this at the time that Liliana Naydan

Matthew Rigilano

Page 83

1 circulated this call for, quote, black linguistic justice?

2 A. I did.

3 Q. So you're familiar with its content?

4 A. Vaguely. I haven't read it since, so I'm kind of
5 fuzzy on the specifics.

6 Q. If I just skip down to the top of -- well, it's
7 marked two out of eight in this website, this printout.
8 It has an inset paragraph there?

9 A. Uh-huh.

10 Q. That starts with Ebonics. Do you see where I'm
11 referring to?

12 A. The black square?

13 Q. No. I'm talking about the it's on page --

14 A. Oh.

15 Q. -- 2 of 8, and it has an inset paragraph?

16 A. Yes.

17 Q. It says Ebonics reflects the black experience and
18 conveys black traditions and social -- socially real
19 truths. Did I read that right?

20 A. Yeah.

21 Q. As a linguist yourself, what is Ebonics?

22 A. I believe it's just a now used less term to refer
23 to African American vernacular.

24 Q. Do you know anything about the history of

Matthew Rigilano

Page 84

1 Ebonics? If you don't, that's okay.

2 A. I don't. I know it -- it -- it emerges in I
3 believe the '70s as a -- as an object of study.

4 Q. And this is something being actively promoted by
5 the program director of the writing program, right?

6 MR. SMITH: Objection to form.

7 BY MR. ALLEN:

8 Q. This black linguistic justice movement of the
9 CCCC?

10 MR. SMITH: Objection to form.

11 THE WITNESS: Well, she's, yeah, encouraging us
12 to engage with this material. Yeah.

13 BY MR. ALLEN:

14 Q. And then if you look at the black -- I think you
15 first referred to that black block of I guess action items
16 that this group is setting forth, right? The second one
17 says -- apparently, these are calls to action, if you skip
18 down. Is that fair to characterize the document as
19 highlighting these as calls to action?

20 A. Yeah.

21 Q. And the second one is teachers have to stop -- I
22 shouldn't say it says that literally. It says teachers
23 stop teaching black students to code switch and teach
24 black students about antiblack linguistic racism and white

Matthew Rigilano

Page 85

1 linguistic supremacy instead, right?

2 A. I see that, yes.

3 Q. Was this discussed by your program director,
4 Lilitiana Naydan?

5 A. Not that I remember.

6 Q. It also says teachers --

7 A. I --

8 Q. Go ahead.

9 A. I don't believe. Like again, I could be wrong.
10 I don't believe this was subject to -- to much discussion
11 in a program meeting, and so I don't know if it was just
12 an e-mail thing or maybe it was, but I don't know.

13 Q. She's certainly promoting it in this e-mail,
14 right?

15 MR. SMITH: Objection to form.

16 THE WITNESS: Um, well, she's -- she's asking us
17 to engage with it. Promote, I'm not sure. I mean,
18 it's -- you know, it's a big conference that any comp
19 person would be associated with, and so I think -- I can't
20 speak for her, but I think she thinks it's important to
21 engage with it.

22 BY MR. ALLEN:

23 Q. Well, let's look at what she says for herself on
24 Page 1 of Exhibit 5. The e-mails says I hope you'll join

Matthew Rigilano

Page 86

1 me in this important work to assure that black students
2 can find success in our classrooms, right?

3 A. Yes.

4 Q. Is it fair to say she's promoting it?

5 MR. SMITH: Objection to form.

6 BY MR. ALLEN:

7 Q. She's saying I hope you'll join me, correct?

8 A. Yes.

9 Q. Is it your testimony today that that's not really
10 promoting or endorsing this black linguistic judgment --
11 justice movement of the CCCC?

12 A. I mean, I think she's promoting our engagement,
13 which is to say, you know, I don't think she's saying I
14 agree to every element in this document. But I think she
15 thinks in general, it is a legitimate and important
16 conversation to have and that she clearly subscribes to
17 certain ideas about the way in which white supremacy
18 manifests itself in language as written there.

19 Q. Sure. As your program director, right?

20 A. Yes.

21 Q. You would agree that she's sending this as the
22 program director of the writing program?

23 A. Um --

24 Q. Through Canvas, right?

Farrell Court Reporting

Matthew Rigilano

Page 87

1 A. She was -- she was the director at this time,
2 yes.

3 Q. And she was also department head of the English
4 program?

5 A. Correct.

6 Q. Just to close the loop, if you jump back to Page
7 2 of 8 of this website, you see how at the bottom under
8 that big block of black, white letters on black
9 background, it says we demand that. It's almost like a
10 manifesto, correct?

11 MR. SMITH: Objection to form.

12 THE WITNESS: Could you point to where you're
13 referring again? Oh, on the side. Yeah.

14 BY MR. ALLEN:

15 Q. Do you see we demand, and then down here?

16 A. Yes, I see that.

17 Q. And these are the same. I think we can see this
18 on film, but I'm just -- I'm just pointing to the witness
19 that there is literally the phrase we demand that. And
20 then, there's a bullet point one, two, three. And those
21 are the same demands that are in this black block?

22 A. Uh-huh. Yes.

23 Q. Apparently for emphasis, correct?

24 A. Yes.

Matthew Rigilano

Page 88

1 Q. Okay. And then if you look down on the next
2 page, there's another demand?

3 A. Three of eight. Yeah.

4 Q. Yes. And incidentally, this is publicly
5 available on the website of the CCCC?

6 A. Yeah.

7 Q. It say demand. We demand that teachers stop
8 using academic language and standard English as the
9 accepted communicative norm which reflects white
10 mainstream English, exclamation point, right?

11 A. Yes.

12 MR. SMITH: Michael, I apologize. Are we -- I'm
13 not sure where we are on Page 3. Are we at the bottom?

14 MR. ALLEN: Page 3 of 8. Do you see where it
15 says demand, hash tag, numeral one?

16 MR. SMITH: Oh, I'm sorry. I was looking at
17 number two. Thank you.

18 BY MR. ALLEN:

19 Q. It's in bold as the heading of that entire
20 section, right?

21 A. Correct.

22 Q. And if you look down at some of the text, it says
23 in the looks like third sentence in that paragraph under
24 that we demand big black block with white letters,

Matthew Rigilano

Page 89

1 socially constructed terms like academic language and
2 standard English are rooted in white supremacy with white
3 in bold, right?

4 A. Uh-huh.

5 Q. Whiteness and antiblackness and contribute to
6 antiblack policies that are codified and enacted to
7 privilege white, white in bold again, linguistic and
8 cultural norms while deeming Black language inferior. Did
9 I read that correctly?

10 A. You did.

11 Q. Do you know of any writing professor at Penn
12 State Abington that would have ever characterized African-
13 American English as inferior while you were there?

14 A. No.

15 Q. Have you ever taught that to any students in your
16 classes?

17 A. That, like, Black linguistic practices are
18 inferior?

19 Q. Yes.

20 A. No.

21 Q. But you have taught them that standard American
22 English is what we talked about earlier is the language of
23 commerce, accepted forms of communication among people who
24 would -- I think you characterized this applies to The New

Matthew Rigilano

Page 90

1 York Times, correct?

2 A. That I've taught standard English, yes.

3 Q. Yeah.

4 A. I -- but I -- I typically understand it as not
5 the only way to communicate.

6 Q. And who is your experience has ever taught that
7 it's the only way to communicate? Let me strike that
8 question.

9 A. I've been --

10 Q. Can you name a single professor that you know has
11 taught that at Penn State on any campus?

12 A. No.

13 Q. Thank you. And when you teach standard English
14 as you've described it, your goal isn't to impose upon
15 students who are not white the impression that they're
16 inferior, is it?

17 A. That's not my goal.

18 Q. Do you agree with this statement that is purveyed
19 in this demand number two, the second sentence there, it
20 says -- excuse me. It says in the third sentence will
21 using white, mainstream English prevent black students
22 from being judged and treated unfairly based solely on the
23 color of their skin? Do you see where they ask that?

24 A. Could you point me in the direction one more

Matthew Rigilano

Page 91

1 time?

2 Q. Sure. Under number two, see where it says we
3 demand that?

4 A. Yes.

5 Q. And it has demand in big, bold letters and
6 underscored?

7 A. Okay.

8 Q. Then, there's a number two.

9 A. Yeah. I'll read the whole --

10 Q. Yeah. So read it for a second. And then, I'll
11 read it into the record.

12 A. Okay.

13 Q. So is it fair to say that this CCCC group is
14 characterizing the teaching of standard American English
15 as what they say here, antiblack linguistic racism?

16 A. It does seem to imply that.

17 Q. And that's something that your program director
18 was promoting at Penn State Abington in your writing
19 program?

20 MR. SMITH: Objection to form.

21 THE WITNESS: I don't know. I don't think she
22 was promoting it. I -- I think she was encouraging us to
23 consider it, which we have discussed in different venues,
24 if not this particular text. I think many of our writing

Farrell Court Reporting

Matthew Rigilano

Page 92

1 program meetings kind of approach these different ideas,
2 you know, this kind of new rhetoric emerging in 2020 as
3 things to consider.

4 MR. ALLEN: Let's look at another exhibit that
5 I'm gonna mark as Exhibit 6. This is gonna be a PSU --
6 incidentally, the Bates stamp used by your counsel is for
7 their production of institutional documents is PSU-De
8 Piero followed by the page number. Can we understand when
9 I say PSU and the number, that's their documents and their
10 Bates stamps?

11 MR. ALLEN: Sure. Yeah.

12 (Exhibit 6 was marked for identification.)

13 BY MR. ALLEN:

14 Q. So this is Bates stamped PSU 002441. I'm again
15 gonna have -- ask that the court reporter mark this as
16 Exhibit 6.

17 The heading is an e-mail dated August 12, 2020.
18 And it's from you, Professor Rigilano. I'm just providing
19 a copy of this to your counsel.

20 Now, it's in the nature of e-mails that they
21 start at the bottom and they go to the top. So if I can
22 ask you to turn to the last page, that'll be -- if I'm not
23 mistaken, that will be the first in time. And then, they
24 go on.

Matthew Rigilano

Page 93

1 It starts with an e-mail by your program
2 coordinator of the writing program, Liliana Naydan, on
3 August 7, 2020 at 8:34 p.m. Do you see that?

4 A. Yes.

5 Q. And she's again sending out an e-mail where the
6 caption in bold is black linguistic justice, correct?

7 A. Yes.

8 Q. And that's this sort of CCCC movement that we
9 just were reading a little bit about in the previous
10 Exhibit No. 5, correct?

11 A. Yes. I'm not sure why it's the title of this
12 chain. Maybe it's a reply to the initial e-mail?

13 Q. We'll go through it.

14 A. Okay.

15 Q. And again, she says I think this is a great idea,
16 right?

17 A. Yes.

18 Q. Then if we go up to the next e-mail, there's a
19 response on August 7th at 9:52 p.m. by Stephen Cohen,
20 right?

21 A. Yes.

22 Q. And did you describe Stephen Cohen as a lecturer
23 before?

24 A. Yes.

Matthew Rigilano

Page 94

1 Q. Okay. And they're discussing the -- the message
2 sent in Canvas, as you can see by the subject line,
3 correct?

4 A. Yes.

5 Q. And then, it says if you skip down about the
6 sixth line down, there's a sentence that begins mostly,
7 I'm asking you. Do you see that?

8 A. Uh-huh.

9 Q. Have you had a chance to read this -- this
10 e-mail?

11 A. Recently?

12 Q. Just right now.

13 A. Oh. Should I read this paragraph?

14 Q. Sure, please.

15 A. Okay.

16 Q. You've had a chance to read it?

17 A. Yeah.

18 Q. So is it fair to characterize this message from
19 Stephen Cohen on August 7, 2020 in Exhibit 6 he is talking
20 to your program director, Liliana Naydan, about making
21 what they're referring to as black linguistic justice some
22 kind of initiative that they're developing part of the,
23 quote, official and sanctioned work of the English
24 program?

Matthew Rigilano

Page 95

1 MR. SMITH: Objection to form.

2 THE WITNESS: Um, I think this was referring to a
3 community of practice, but I don't know what its
4 relationship to black linguistic justice is.

5 BY MR. ALLEN:

6 Q. Well, this comes in response to her e-mail black
7 linguistic justice, correct, which she says is a great
8 idea.

9 MR. SMITH: Objection to form.

10 MR. ALLEN: Your attorney just objected. I'm not
11 sure what the objection.

12 MR. SMITH: I --

13 MR. ALLEN: She says I think this is a great
14 idea. What's the objection?

15 MR. SMITH: Michael, as the witness pointed out,
16 there's an e-mail below that that we can't see that she's
17 responding to. I think it's unclear what she's saying is
18 a great idea. You're assuming that she's talking about
19 black linguistic justice. There's an e-mail from Stephen
20 Cohen --

21 MR. ALLEN: I'm not assuming. It says black
22 linguistic justice in the caption of the e-mail, correct?

23 MR. SMITH: Michael, I'm saying there's an e-mail
24 below, Friday, August 7, 2020, 7:23 p.m. from Stephen

Farrell Court Reporting

Matthew Rigilano

Page 96

1 Cohen where we can't see the body of the e-mail, and she's
2 responding to that.

3 MR. ALLEN: True enough. I'm asking him about
4 the e-mails that are right here. And your objection is
5 preserved, so I'm just gonna go back.

6 BY MR. ALLEN:

7 Q. And Professor Rigilano, you just said this refers
8 to a community of practice, correct?

9 A. Yes.

10 Q. But I wanna read this sentence that begins
11 mostly, I'm asking you. Okay? So says mostly, I'm asking
12 you because I'd like to see you, Lila -- or Leela, I
13 believe you've pronounced it -- channel communications
14 about it so that it seems official, quote, and sanctioned
15 by the English program (rather than just the community of
16 practice I was going to put together with people who are
17 teaching online,) right?

18 A. Correct.

19 Q. So don't you understand from that that he wants
20 to establish this with what they're working on here, which
21 is referring to black linguistic justice, that he wants to
22 make this some sort of, quote, official and sanctioned
23 project of the English program, right?

24 MR. SMITH: Objection to form.

Matthew Rigilano

Page 97

1 THE WITNESS: There was this idea of a community
2 of practice -- I don't remember at what level of the
3 university or if it was outside the university -- that one
4 could apply to to get funds to create whatever a community
5 of practice actually is, which I'm not sure. Um, again, I
6 think that the -- the black linguistic justice is the
7 subject heading to the e-mail and not necessarily the idea
8 to which Lila is -- is consenting to. But indeed, Stephen
9 is asking Lila to take sort of charge of this initiative,
10 assuming that it would have more success coming from
11 someone sort of with more clout.

12 BY MR. ALLEN:

13 Q. And in the -- in the third sentence after that
14 section, he says of course, it might not, which would be
15 all right, too, but I think it stands a better chance of
16 becoming something if it's an official English department
17 thing, right?

18 A. Yes.

19 Q. Now, when you got this e-mail string, wouldn't
20 you have understood that to be an initiative to make
21 something part of the official English department?

22 A. Yeah. This community of -- this, whatever it's
23 called again, community of practice to make it a sort of a
24 more official element of the -- of the program.

Farrell Court Reporting

Matthew Rigilano

Page 98

1 Q. And it's your testimony today that you didn't
2 understand this initiative to be about black linguistic
3 justice?

4 A. I -- I don't remember. I don't think so. It's
5 not -- I think it was more of a general -- it had to do
6 with antiracism, but I can't be sure what its specific
7 reference was.

8 Q. And then the next e-mail up from that, it looks
9 like -- and just before we go on, your attorney was
10 pointing out that there's some e-mail that seems to have
11 been referred to. And it says show quoted text at the
12 bottom, right, from Stephen Cohen?

13 A. Uh-huh.

14 Q. Do you have any reason -- do you know of any
15 reason why that e-mail was not included in Penn State's
16 production of this e-mail chain?

17 A. No.

18 Q. You don't yourself recall deleting it or anything
19 of that nature, do you?

20 A. No. It looks like it was there. It says show
21 quoted text. I don't know what that means.

22 Q. So if we go on up on August 9th, so it's now two
23 days later, there's an e-mail by Lee -- Grace Lee-Amuzie,
24 correct?

Matthew Rigilano

Page 99

1 A. Yes.

2 Q. And then again, another one by Liliana Naydan on
3 August 9th at 9:24 p.m. I have to say, you guys work
4 late. She says -- although it's not clear who the
5 recipient is, but we know -- we'll get to in a second that
6 you received this entire string. But she says I'm
7 interested in making this work writing program work, not
8 just the work of a special interest group.

9 Do you see how that what I just read aloud starts
10 at the end of the first line?

11 A. Yeah. Can I read the first sentence again? It
12 is kind of weird.

13 Q. Sure. I can't find the original e-mail that
14 Stephen sent.

15 A. Nobody can.

16 Q. Apparently, she doesn't know either, but I wanted
17 to mention that I'm interested in making this work writing
18 program work, not just the work of a special interest
19 group, right?

20 A. Yes.

21 Q. And remember, she had sent an e-mail captioned
22 black linguistic justice as I guess a response to this
23 e-mail, right?

24 A. That was in the subject header, yes.

Farrell Court Reporting

Matthew Rigilano

Page 100

1 Q. And she clearly wants to make whatever she's
2 referring to in the original e-mail that Stephen sent
3 writing program work, not just a hobby?

4 A. Yeah. I -- I take that to mean that she wants
5 the writing program to be involved with this community and
6 not just a sort of like a subcommittee.

7 Q. And then, you see the next day, August 10, 2020
8 at 10:54 a.m., Stephen Cohen responds in the thread,
9 right?

10 A. There might have been things moved around.

11 Q. I don't -- I think this was all single sided,
12 right?

13 MR. SMITH: I have it on mine.

14 THE WITNESS: It's -- it's -- the number is 2442?

15 MR. SMITH: Correct.

16 BY MR. ALLEN:

17 Q. Now, you've discovered the magic of Bates
18 numbers, which we attorneys perversely love.

19 A. Makes sense.

20 Q. But yes, here we are in famous PSU page 02442.
21 And you see, it's an e-mail by Stephen Cohen here in
22 Exhibit 6 sent on August 10, 2020 at 10:54 a.m.

23 A. Okay.

24 Q. And let's just read some of this e-mail. Again,

Matthew Rigilano

Page 101

1 they're focusing on the centrality of this initiative to
2 the writing program. If you look at the third paragraph,
3 I think, and please correct me if I'm wrong, that Lila's
4 saying she want -- I assume that's a typo -- want to find
5 a way to make this part of all our regularly scheduled
6 writing program professional development meetings. Did I
7 read that correctly?

8 A. Yes.

9 Q. And do you remember this being an initiative at
10 that time?

11 A. Um, I don't remember it being an initiative. It
12 certainly is the case that the year's programming revolved
13 about issues of antiracism. I was on this chain,
14 presumably, but yeah. I see that that's what was going
15 on, yeah.

16 Q. And then, let's skip up to the next e-mail.
17 That's at the midway down the PSU 02441 page. Do you see
18 that, starts from Liliana Naydan?

19 A. Yes.

20 Q. It's a little bit later that morning, just before
21 noon. She says I am having separate conversations with
22 each of you about how I want to focus on race this
23 semester and all year, really. Did I read that right?
24 That's the second or --

Matthew Rigilano

Page 102

1 A. Yes, I see it.

2 Q. -- third sentence.

3 A. Yeah.

4 Q. Now, do you remember her talking to you
5 individually about this initiative?

6 A. I don't remember it.

7 Q. You don't remember the conversation she's
8 referring to here?

9 A. Um, presumably it has to do with this e-mail
10 above it. But, like, in terms of just do I remember
11 having the e-mail conversation? Not particularly.

12 Q. And you see that your e-mail is here on the CC
13 line, correct?

14 A. Yes.

15 Q. And that seems to be a private e-mail; is that
16 correct?

17 A. Yeah. That's my Gmail account.

18 Q. Okay. Then, we get to the header e-mail in which
19 you're writing back and responding to this thread, right?

20 A. Yes.

21 Q. And you express your agreement that the writing
22 program meetings should be used to discuss how teaching
23 can respond to the social and political dynamics of the
24 present moment, right?

Matthew Rigilano

Page 103

1 A. Yes.

2 Q. More particularly, skipping through a sentence,
3 you write I agree that the topic on which I will be
4 leading discussions in January can and should be modified
5 to address issues of race and racism more directly, right?

6 A. Yes.

7 Q. And when you wrote this e-mail, did you review
8 the entire thread that you were responding to to find out
9 what they were talking about?

10 A. Huh. I must have read, been -- yeah, aware of
11 it.

12 Q. And that would have included your program
13 director's reference to black linguistic justice right?

14 A. That reference would have been part of it, yeah.

15 Q. But as you sit here today, you can't remember the
16 individual conversation she referred to in her e-mail
17 thread that you had about this topic, right?

18 A. Um, not that I remember. I mean, I was planning
19 to lead one of the meetings that was on the agenda in
20 January on participation, and -- yeah. Right. So I
21 have -- there's another e-mail that I gave where, yeah,
22 Lila and I -- I don't remember this. I just remember it
23 from looking at it in the e-mails that I collected.

24 Q. The e-mail in your production, is that --

Matthew Rigilano

Page 104

1 A. Yeah, where, yeah, there was this idea to modify
2 whatever -- I had no plan, so it wasn't a problem -- to be
3 in concert with this initiative.

4 Q. And do you remember writing a grant of some sort
5 in conjunction with this project?

6 A. I don't -- I don't know if that ever came into
7 fruition. Or if it did, it was like it became a thing
8 that Grace and Stephen were doing.

9 Q. Do you remember the Schreyer Institution for
10 Teaching Excellence at Penn State?

11 A. Familiar with it.

12 Q. You don't recall anything about applying for a
13 grant with them?

14 A. I recall I think that that is what the -- the
15 community of practice is. Is that -- maybe they sponsor
16 it, but I don't remember writing one, for instance.

17 Q. You don't remember participating with your
18 program coordinator Liliana Naydan, Grace Lee-Amuzie,
19 Stephen Cohen in an initiative to get a grant from the
20 Schreyer Institute?

21 A. Is that the same thing as the community of -- I
22 don't know if that's --

23 Q. Well, this community of practice thing is
24 something you brought up. But we examined an e-mail by

Farrell Court Reporting

Matthew Rigilano

Page 105

1 Stephen Cohen, where he says that what he wants to do is
2 specifically not a community of practice, but basically
3 institutionalize something in the writing program. Do you
4 recall that looking --

5 A. Yeah.

6 Q. -- at those e-mails in Exhibit 6?

7 A. I do.

8 Q. So again, I didn't participate in this, so I'm
9 asking you as the witness.

10 A. Right. I don't remember.

11 Q. Okay.

12 A. I do a lot of, you know, engagement.

13 MR. ALLEN: Well, I'm gonna introduce as Exhibit
14 7, if I can have that stamped.

15 (Exhibit 7 was marked for identification.)

16 BY MR. ALLEN:

17 Q. This is -- Exhibit 7 is an e-mail sent from the
18 Schreyer Institute for Teaching Excellence on August 31,
19 2020. And it -- the first Bates stamp on it is 00 -- it's
20 PSU, excuse me, 002368. Did I read that correctly?

21 A. Correct.

22 Q. So does this help refresh your memory that you
23 were at least, you know, addressed by the Schreyer
24 Institute in the granting of this award?

Farrell Court Reporting

Matthew Rigilano

Page 106

1 A. Sad to say, it doesn't refresh my memory. But I
2 see my name there, yes. I think -- I remember -- I think
3 that they required four participants. And I was obviously
4 from the other e-mail agreed to a part of it, but I
5 don't -- I don't think I drafted the proposal. Maybe
6 that's why I don't have a firm memory of it, but it looks
7 like we won some money.

8 Q. Well, and there's -- it looks like if you skip to
9 the second page, it was the whopping sum of \$300, right?

10 A. Yeah.

11 Q. And that goes a long way in academic programs, I
12 know. But I'm more interested in the first line of the
13 second page of Exhibit 7. It says congratulations --
14 you're also addressed in the letter of congratulations
15 directly in the salutation, correct?

16 A. Correct.

17 Q. Congratulations. It is my pleasure to inform you
18 that your community of practice submission writing
19 teachers for linguistic justice has been awarded support
20 from the Schreyer Institute for Teaching Excellence,
21 right?

22 A. Indeed.

23 Q. Now, do you recall, if you do, that that's
24 linguistic justice referred to here is that program that

Matthew Rigilano

Page 107

1 Lilliana Naydan was originally referring to in the e-mail
2 string in which she recruited you to apply for this
3 program?

4 A. Um, right. So it seems like this community was
5 related to black linguistic justice. I don't know if it's
6 directly related to the 4C's articulation of that, but
7 certainly --

8 Q. Okay.

9 A. -- the idea.

10 Q. What other initiatives did you work on with
11 regard to these kinds of teacher training programs or
12 anything of that nature that was related to what we've
13 just loosely been referring to as linguistic justice, but
14 please more generally any of the sort of DEI inflected
15 writing program initiatives?

16 A. Um, like I said earlier, I didn't do a lot of the
17 or attend many of the various workshops that were on
18 offer. I went to I believe most, not all of the writing
19 program meetings.

20 Q. Uh-huh.

21 A. That we discussed, you know, the text in line
22 with this. Um, it could be that I -- I mean, I didn't
23 remember doing this. So there might have been something
24 similar to it, but not to my memory.

Farrell Court Reporting

Matthew Rigilano

Page 108

1 MR. ALLEN: Well, let's -- and I just wanna ask
2 about this next exhibit that I'm gonna mark as Exhibit 8.

3 (Exhibit 8 was marked for identification.)

4 BY MR. ALLEN:

5 Q. Exhibit 8, marked for the record. It begins with
6 an e-mail captioned 1/19 program meeting antiracist
7 pedagogy. I'm gonna state for the record that this is
8 Bates stamped ZDP 01507. But for some reason, the exhibit
9 that I've just circulated to counsel, the Bates stamp has
10 not printed on the bottom of the page.

11 MR. SMITH: Probably just my copy.

12 MR. ALLEN: Or both. But I'm gonna -- I'm gonna
13 circulate to you this same document. For some reason, it
14 printed one time with the Bates stamp on that first cover
15 e-mail. And --

16 MR. SMITH: Okay.

17 MR. ALLEN: -- for some reason, the one you have
18 doesn't have Bates stamps.

19 MR. SMITH: So just to clarify, the first page is
20 1507?

21 MR. ALLEN: Correct.

22 MR. SMITH: And are they consecutive after that?
23 Do you know?

24 MR. ALLEN: I believe we will find the

Matthew Rigilano

Page 109

1 attachments are associated with this e-mail. I can't say
2 that -- in your production, they're not always sequential,
3 and I'm not -- for the record, I'm not impugning your
4 production. But we didn't get them always in order, so I
5 just can't say. If they're not on there, I just can't
6 say.

7 MR. SMITH: Okay. I understand.

8 MR. ALLEN: But I think we'll be --

9 MR. SMITH: We know the first page Bates number.

10 MR. ALLEN: That's -- I want to give the
11 reference in the record for the court reporter. We'll go
12 from there. I think we'll be able to establish the
13 association through the witness.

14 BY MR. ALLEN:

15 Q. Can I just ask you to look through that? This
16 one is double-sided, I believe so.

17 A. Sure. This is 1/19/2021, yeah.

18 Q. Correct. It's dated January 11, 2021, an e-mail
19 sent at 10:55 a.m. And the person who sent the e-mail is
20 Marissa Nicosia, correct?

21 A. Correct, Nicosia.

22 Q. I believe you explained this earlier in your
23 testimony, but who -- can you describe who she was and
24 what position she had at Penn State Abington?

Matthew Rigilano

Page 110

1 A. Um, she's the current chair of the English
2 program, and she is a tenure line professor of Renaissance
3 English.

4 Q. And do you recognize this e-mail?

5 A. Uh, yeah. Yeah, again, sort of vaguely, right?
6 We had a box to submit different materials that we thought
7 addressed antiracist pedagogical practices.

8 Q. And I think you'll see your name and e-mail up in
9 the to line there, right?

10 A. Indeed.

11 Q. And there's my client right next to you, Zack De
12 Piero, right?

13 A. Uh-huh.

14 Q. So is it safe to say that's your institutional
15 PSU e-mail?

16 A. Yeah.

17 Q. And are these materials you recognize in the --
18 there's a screen shot of a Google Drive here. Do you see
19 that?

20 A. Yes.

21 Q. On the third page? With your name mentioned
22 looks like Rigilano discussion board on Phillis Wheatley?

23 A. Yes.

24 Q. Were these the materials associated with the

Matthew Rigilano

Page 111

1 antiracist pedagogy that was being discussed by your
2 colleague Nicosia?

3 A. In the initial e-mail?

4 Q. Yes.

5 A. Yes.

6 Q. So these were things that the people
7 participating in this uploaded?

8 A. Yes.

9 Q. And just skipping down, it looks like the
10 plaintiff Zack De Piero submitted something with a Homer
11 Simpson meme?

12 A. Uh-huh.

13 Q. Then next in line was Thomas Heise? Did I read
14 that correctly?

15 A. Just Heise.

16 Q. Heise. Who is Thomas Heise?

17 A. Um, he is also a tenure line professor. He
18 teaches creative writing and American literature.

19 Q. And he's suggesting that students in his courses
20 would read WEB DuBois, right?

21 A. Correct.

22 Q. Nella Larsen, Ralph Ellison, James Baldwin,
23 Chester Himes, Rita Dove, Terrance Hayes and Toni
24 Morrison, right?

Matthew Rigilano

Page 112

1 A. Yes.

2 Q. Now, I think you would agree that those are all
3 superlative masters of the English language, correct?

4 A. Correct.

5 Q. Are they any less black for writing in standard
6 American English?

7 A. I don't think so.

8 Q. You would agree that WEB DuBois wrote in standard
9 American English, correct?

10 A. Yes.

11 Q. Just as an example. I don't see why we would go
12 through each one of them, but --

13 A. I mean, there -- you know, there are
14 distinctions, regional and rhetorical distinctions between
15 these authors. For instance, Toni Morrison is, as you
16 say, a master of the English language, but she's also a
17 master of sort of, you know, creating literary voices that
18 emerge from the African-American linguistic context.

19 Q. You would agree, would you not, that it would
20 diminish Toni Morrison to be characterized simply as a
21 Black author rather than an American author, would you
22 not?

23 A. Could you say that again?

24 Q. It would diminish Toni Morrison simply to

Farrell Court Reporting

Matthew Rigilano

Page 113

1 characterize her as a Black author rather than an American
2 author writ large?

3 MR. SMITH: Objection to form.

4 THE WITNESS: I think it would be accurate to say
5 that she's a black American author.

6 BY MR. ALLEN:

7 Q. You're familiar with Mark Twain, right?

8 A. Yes.

9 Q. You know that he characterized himself as an
10 American author?

11 A. Indeed.

12 Q. And Toni Morrison is certainly no less of an
13 American author in that sense than Mark Twain?

14 A. Certainly.

15 Q. The melanin in her skin doesn't make her any less
16 an American author?

17 A. Certainly.

18 Q. Doesn't make her any less a master of standard
19 American English?

20 A. I agree.

21 Q. You realize that both of those authors wrote in
22 black vernacular, correct?

23 A. To some extent. I'm not a Twain scholar.

24 Q. But you're a student of American literature,

Matthew Rigilano

Page 114

1 correct?

2 A. Actually, no. 18th century British literature is
3 my central focus in literary studies.

4 Q. In your studies and as a professional instructor
5 of writing and English, you've been exposed to Mark Twain?

6 A. Certainly.

7 Q. And Toni Morrison?

8 A. Yes.

9 Q. Thank you. And -- but Thomas Heise here asserts
10 that in the second sentence of his second paragraph, in
11 the literature, we explore representations of the internal
12 complexity -- I'm gonna skip through the parenthetical --
13 inside racial communities and how this complexity is
14 manifest in a context of white racism.

15 A. Uh-huh.

16 Q. Did I read that correctly?

17 A. Yes.

18 Q. Do you know of any professors at Penn State
19 Abington that have addressed in this time frame 2020-2022,
20 say, black racism?

21 A. You mean racism perpetrated by black people?

22 Q. Correct.

23 A. I'm not familiar.

24 Q. Any -- anyone tried to incorporate in the

Matthew Rigilano

Page 115

1 teaching materials of Penn State Abington the racism of
2 Hispanics, say, against, black people?

3 A. Huh. I'm not sure. I don't know really what
4 other people are up to, but not to my knowledge.

5 Q. You would agree that racism exists among other
6 ethnic minorities, correct? For each other, for instance?

7 A. Yes.

8 Q. It would be foolish to deny that such things
9 exist, correct?

10 A. Yes.

11 Q. But in your experience, was it only white racism
12 that was being addressed by these pedagogical movements at
13 Penn State at this time?

14 A. Um, yeah. I'd say the majority of the discussion
15 at this time was dealing with anti-Black racism
16 perpetrated primarily by white people. I think this is a
17 resulting not entirely, but clearly primarily from the
18 events of that summer.

19 Q. And we're talking -- just to be clear for the
20 record, we're talking about the tumultuous summer of 2020?

21 A. Correct.

22 Q. In which Covid was compounded by the murder of
23 George Floyd?

24 A. Yes.

Farrell Court Reporting

Matthew Rigilano

Page 116

1 Q. The events in Kenosha, Wisconsin and several
2 others. Is that fair?

3 A. Yeah.

4 Q. Okay. Then there's Lilitiana Naydan's contribution
5 on the next page. I think it's page 6 of Exhibit 8. Do
6 you see that one?

7 A. Yes.

8 Q. And she's asking her audience to respect your
9 peers and educate yourself about bias, correct?

10 A. Yes.

11 Q. It sounds like she's also encouraging critical
12 discussion if you look at those bullet points, correct?

13 A. Um, yes. So should I -- I'll take a moment to
14 read them.

15 Q. Please.

16 A. Okay.

17 Q. And she -- in fact, in that third bullet point,
18 she actually appears to endorse or encourage criticizing
19 ideas, right?

20 A. Yes.

21 Q. So long as you don't criticize individuals. Is
22 that fair?

23 A. Yes.

24 Q. Okay. And this bias she's talking of, how did

Farrell Court Reporting

Matthew Rigilano

Page 117

1 you understand that? What is she referring to as you
2 understood it when you read these materials?

3 A. I guess I assumed that she was talking about the
4 various forms of bias that exist in society and that
5 students should learn about them. So, for instance,
6 sexism, racism, other kind of oftentimes implicitly held
7 beliefs that I think she's encouraging people to
8 understand.

9 Q. And don't the materials as we've just examined
10 them also promote bias against white people?

11 MR. SMITH: Objection to form.

12 THE WITNESS: Which materials?

13 BY MR. ALLEN:

14 Q. I don't know. We just went over Thomas Heise,
15 isn't it his name?

16 A. Yes, we did.

17 Q. He's talking about, quote, white racism, but no
18 one else's racism, right? Does that evince a bias against
19 white people? It's only their racism we're gonna talk
20 about?

21 A. I don't know if that's a bias. It's a focus.

22 Q. How is a bias different from a focus?

23 A. Well, I mean, it's two paragraphs. I don't know
24 if this excludes other kinds of racism, even though it's

Matthew Rigilano

Page 118

1 clearly focusing on and on white racism.

2 Q. But you've never heard Thomas Heise to
3 concentrate or focus as you've said on any other kind of
4 racism, have you?

5 A. Not to my knowledge. I don't know him well or
6 haven't read his syllabi.

7 Q. If you could just skip down to Marissa Nicosia's
8 contribution. She's here on page -- it's the PDF page 10.
9 It starts with the caption Three Performances of Richard
10 II?

11 A. Yes.

12 Q. Do you remember examining this?

13 A. Vaguely. I can read it over.

14 Q. Yeah, please.

15 A. Okay.

16 Q. So I'm really interested in the sentence that
17 begins the last paragraph there. Shakespeare is perhaps
18 the pinnacle of white privilege in the cannon. You see
19 that?

20 A. Yes.

21 Q. Now, you were in these discussions. What did she
22 mean by that as you understood it?

23 A. Um, I don't remember talking about it. I think
24 it's sort of -- I think the idea is that, you know, we

Matthew Rigilano

Page 119

1 have these long standing literary cannons, and Shakespeare
2 was white and is often heralded as, you know, the great
3 playwright that he is. And -- and like that maybe his,
4 you know, whiteness plays a role in other people's efforts
5 to, like, I don't know, create, like, cultural or social
6 lineage or connection. I'm not really sure what she means
7 by it, honestly.

8 Q. Is it linguistic injustice to expose Black
9 students to Shakespeare?

10 A. No.

11 Q. You would never argue that, right?

12 A. I would not.

13 Q. Have you ever heard of anyone arguing that, I
14 don't know, Toni Morrison is canonized because she enjoys
15 black privilege?

16 A. I have not heard that argument.

17 Q. You've heard the argument that she's canonized
18 because she's a great writer, right?

19 A. Yes.

20 Q. And I think the same for any of those other
21 authors, WEB DuBois, right?

22 A. Correct.

23 Q. So it's only white author that you've heard Chris
24 time a quote pinnacle of white privilege at Penn State

Matthew Rigilano

Page 120

1 Abington?

2 A. Yes. I mean, insofar as this is probably the
3 sole example.

4 Q. And then, I see your contribution is next. The
5 discussion board week nine about I believe it's Phillis
6 Wheatley, is it?

7 A. It is. Yes.

8 Q. And how would you describe your contribution?

9 A. I'll read it over again.

10 Q. You wrote this, right?

11 A. Yes.

12 Q. And I'm not suggesting your memory is faulty. I
13 just wanted to confirm.

14 A. Yeah.

15 Q. So just to repeat the question, could you read my
16 question to the witness again, Madame Court Reporter?

17 (The court reporter read back the last question.)

18 THE WITNESS: Um, so this is a discussion board
19 post that would have been in my upper level 18th century
20 British Literature course. Um, and a discussion board
21 is -- it takes place on Canvas. It's asynchronizly done,
22 so students would respond to it and to one another. And
23 I'm asking them to think about the poetry of Phillis
24 Wheatley, who was an important prominent 18th century

Farrell Court Reporting

Matthew Rigilano

Page 121

1 poet. She was enslaved for the early part of her life,
2 and she was writing in a moment of political turmoil.

3 Q. Would you characterize this poem as standard
4 American English to the extent that poetry is standard
5 American English? You know what I mean? I'm not saying
6 that poetry doesn't have its own stylistic formalities,
7 but I want to ask whether this is more written in the
8 style of mainstream English.

9 A. Um, not standard American English. I feel like
10 that as a model emerges more in the 19th century and kind
11 of solidifies in the 20th. She's writing in -- in heroic
12 couplets, which would have been popular by people like
13 Dryden and Pope, the early part of the 18th century.

14 Q. Shakespeare?

15 A. Well, he had, yet again, another sort of, yeah,
16 particular way of writing. I mean, it's she's writing in
17 the style of high British poetry in the 18th century. I
18 wouldn't say it's standard American or any kind of
19 American because most Americans if they were to read this
20 would have no idea what to do, just given the fact that
21 she was extraordinarily literate and --

22 Q. Astounding.

23 A. -- culturally aware, whereas, you know, most
24 people that are just, whatever, cobblers would not have

Matthew Rigilano

Page 122

1 the mythological, Biblical, cultural knowledge to parse
2 this.

3 Q. It's safe to say she writes heroic couplets in a
4 superlative fashion compared to probably most white people
5 of her day, correct?

6 A. Yes.

7 Q. You might even say she's a better writer than
8 George Washington, right?

9 A. I've never read his correspondence. But given
10 that she is the one canonized in literary volumes, then
11 probably a good argument.

12 Q. Is she any less Black for writing in this
13 tradition of British letters?

14 A. No. I think it's part of the complexity of her
15 experience was that she was -- wrote in this particular
16 way.

17 Q. And would you -- is it fair to say this embodies
18 your critical approach to teaching that you described
19 earlier? You wanna teach critical thinking. That's what
20 you said earlier, right?

21 A. Yeah.

22 Q. And you described your critical thinking
23 approach?

24 A. Right.

Matthew Rigilano

Page 123

1 Q. Does this project, this prompt embody that
2 critical approach?

3 A. Yes. For instance, there are -- there's -- you
4 know, there are schools of thought that would look at this
5 poem and interpret it exclusively with respect to its own
6 internal logic and not consider, for instance, the social,
7 kind of cultural context that I would think, you know, if
8 you're reading it critically, you'd have to understand,
9 you know, what does it mean for an enslaved person to be
10 writing an encomium to General Washington? Right? There
11 are many factors at play that inform the poem, so that
12 would be yes.

13 Q. I'm curious. Have you ever applied for a tenure
14 track position at Penn State Abington?

15 A. No.

16 MR. ALLEN: Can we go off?

17 VIDEOGRAPHER: Off the record, 1:00.

18 (A break was held.)

19 VIDEOGRAPHER: We're back on the record, 1:33.

20 BY MR. ALLEN:

21 Q. So for the record, I have an audio file. Well,
22 let me -- let me preface this. Do you recall, Professor
23 Rigilano, a program meeting on October 18, 2020, I believe
24 it was? It was on the myth of the color-blind classroom.

Farrell Court Reporting

Matthew Rigilano

Page 124

1 A. Yes.

2 Q. And do you remember my client, Zack De Piero,
3 being there?

4 A. Yes.

5 Q. Who led that meeting?

6 A. Um, I think that meeting was co-led by Lila and
7 Grace.

8 Q. Your program coordinator Liliana Naydan and Grace
9 Lee-Amuzie?

10 A. Correct.

11 Q. That was a meeting that advertised to the entire
12 program faculty, correct?

13 A. Yeah, it would have been. But yeah, there's --

14 Q. So anyone could come?

15 A. Yes.

16 Q. And it was by Zoom?

17 A. Uh-huh.

18 Q. So it was more or less participate in, but at the
19 same time broadcast into people's homes?

20 MR. SMITH: Objection to the form.

21 THE WITNESS: It was on Zoom.

22 BY MR. ALLEN:

23 Q. Correct. So people were working from home at
24 that time?

Matthew Rigilano

Page 125

1 A. Oh, correct. Yes.

2 Q. I ask because it was -- it was still the Covid
3 era?

4 A. Uh-huh.

5 Q. And there was no monitor -- do you -- let me put
6 it this way.

7 Do you recall any monitoring of who may or may
8 not have been privy to the Zoom meeting in the background;
9 family members, random neighbors, anything of that nature?

10 A. Oh, I don't know. I don't -- I didn't see
11 anybody, like, walking around, but it's always possible on
12 Zoom.

13 Q. There was never any requirement by the two
14 directors of the program, your program coordinator Liliana
15 Naydan or Grace Lee-Amuzie to limit the Zoom to only
16 people who were visible on the screen?

17 A. Um, well, it was a meeting for writing program
18 faculty. I don't -- I mean, other people outside of that
19 wouldn't have been, you know, invited. Like if there
20 was -- if there was an -- if it was an in-person meeting,
21 it would have just been writing faculty members.

22 Q. Correct. But we're talking about how it actually
23 was.

24 A. Yeah.

Matthew Rigilano

Page 126

1 Q. A Zoom meeting?

2 A. Yeah.

3 Q. There was no emphasis by either your program
4 director, Liliana Naydan or Grace Lee-Amuzie that it be
5 kept confidential, right?

6 A. No. It didn't have, like, a passcode for
7 entrance.

8 Q. Do you know if it was recorded by your employer,
9 Penn State Abington?

10 A. Not to my knowledge.

11 Q. Okay. So I'm gonna introduce a recording of that
12 meeting. I'm gonna represent to you that this is a
13 recording made of that meeting as Exhibit 9.

14 (Exhibit 9 was marked for identification.)

15 BY MR. ALLEN:

16 Q. I can't give you the exhibit, but we're gonna
17 listen to some clips. Before we do that, I want to ask
18 you how did -- how did Zack De Piero, how did his
19 participation go in the meeting?

20 A. Um, so this is the meeting after which there was
21 some discussion with the bias commission, what have you.

22 Q. You're saying that or you're -- I can't testify,
23 so I'm not --

24 A. Correct. Right.

Matthew Rigilano

Page 127

1 Q. So it's your -- let's just back up.

2 It's your recollection that after this, there was
3 a discussion with the anti-bias people at Penn State?

4 A. Yeah. I was just reminding myself of the date.
5 It's been a long, long time. I obviously have thought
6 about this meeting, you know, on more than one occasion.
7 It was a sort of it felt like a big thing. I think it was
8 the last meeting I saw Zack in attendance that I
9 recollect, at least on camera.

10 Q. Uh-huh.

11 A. I don't remember a lot about, like, how the
12 conversation began or after with respect to Zack's, how do
13 you put it, his participation.

14 Q. Yes.

15 A. But then, there was a distinct moment where
16 things kind of turned and he seemed to be addressing I
17 think fairly explicitly Lila and Grace on a particular
18 matter from the reading, and it got a little -- a little
19 uncomfortable and it was like a couple of minutes. And
20 then, I don't remember what occurred after, like, how far
21 into the meeting that moment was or how the conference
22 kind of got back on track.

23 Q. I'm glad you mentioned that it got uncomfortable.
24 That's what you just said, right? Do you recall any of

Matthew Rigilano

Page 128

1 your colleagues at this time advocating that it was
2 necessary to feel uncomfortable in these kinds of
3 conversations about race in the United States?

4 A. Um, I don't -- I don't remember any particular
5 utterance. But indeed, during this year, I think part of
6 the rhetoric was to have these conversations that we would
7 often be -- you know, you might be in a position to feel
8 uncomfortable.

9 Q. Is it a requirement by your employer that you
10 never make anyone feel uncomfortable?

11 A. I don't know. For instance, I'm not sure if
12 there's like a code of conduct that says it explicitly.
13 Not to my knowledge.

14 Q. Do you personally find it unprofessional to ask
15 questions that make people uncomfortable?

16 A. Um, I don't think that the question itself if --
17 I think it's okay to ask a question that might make
18 someone feel uncomfortable; of course, within the limits
19 of it not being harassing or what have you. So yeah, I
20 think it's okay that a question can make someone
21 uncomfortable.

22 Q. Do you recall Zack De Piero gesticulating during
23 the conversation on October 18, 2020?

24 A. I don't recall his sort of visual presence very

Matthew Rigilano

Page 129

1 well. Um, I recall he had a fairly intensified tone
2 during his questioning.

3 Q. Did you find that offensive?

4 A. I wouldn't say offensive. I found it
5 uncomfortable. I think it --

6 Q. Interesting.

7 A. The -- it seemed a little more confrontational
8 than is sort of the norms of those kind of meetings.

9 Q. You remember in your program director Liliana
10 Naydan's materials about racial justice and linguistics
11 that she had actually encouraged people to ask critical
12 questions, right?

13 A. Uh-huh.

14 Q. Is it unprofessional to ask critical questions of
15 the directors of a -- let's say the leaders of a
16 discussion like they were leading that discussion October
17 18th?

18 A. Well, I agree that there was the encouragement to
19 ask critical questions. I think one of the criteria from
20 the -- from the item mentioned by Lila is like, you know,
21 debating ideas, not individuals. Um, I feel like this
22 what we're talking about kind of slips between those. I
23 mean, I think that Zack was -- he was asking about a
24 particular idea about racism in the classroom, but it was

Matthew Rigilano

Page 130

1 directed towards Lila and Grace specifically, how -- how
2 they would respond as opposed to sort of just the group,
3 which again would have been the sort of norm for that kind
4 of conversation.

5 Q. Do you recall any other participants in the
6 conversation telling the group that they thought Zack's
7 questions were good questions?

8 A. I don't remember.

9 Q. So let me just recap. You don't recall him
10 gesticulating in any kind of offensive way?

11 A. Not that I can remember.

12 Q. And you were an eyewitness to the whole Zoom
13 meeting, right?

14 A. Yes. I was present, yeah.

15 Q. You did say that at certain points, you thought
16 that his tone was somewhat I think you described it as
17 elevated?

18 A. Intense.

19 Q. Intense. And that you felt that he addressed
20 Lilitiana Naydan and Grace Lee-Amuzie directly, which was
21 not the norm for that group?

22 A. Yeah. Yeah. Like for a question like this where
23 it's, you know, just discussing kind of like an academic
24 matter, this seemed to be like have the effect of putting

Matthew Rigilano

Page 131

1 them on the spot, if I could put it that way.

2 Q. But they were the organizers of this meeting,
3 right?

4 A. They were.

5 Q. And they assigned the reading that you were all
6 reading together, right?

7 A. They did.

8 Q. Would it be beyond the norm of academic
9 discussions in the writing program led by Liliana Naydan
10 to address someone directly who had assigned a reading?

11 A. I don't think it was the direct address as such.
12 I think it was the tone seemed to imply that he was
13 frustrated and wanted, like, a specific kind of answer,
14 um.

15 Q. Was it illegitimate for him to ask a critical
16 question of the people who had organized the writing
17 program meeting?

18 A. I think it's a gray area. I think after the
19 fact, I remember thinking, um, that -- that that kind of
20 line of questioning might have been more effective if it
21 was sort of maybe between, like, Lila and Friederike or
22 something like -- like, you know, that Zack had an issue
23 with it and wanted to kind of address it at the level of,
24 like, the administrative level. So I don't know if it was

Matthew Rigilano

Page 132

1 illegitimate, but it certainly wasn't -- wasn't typical.

2 Q. Did you believe Zack De Piero should be
3 reprimanded for his behavior in that meeting?

4 A. I don't know. I can imagine a number of
5 different ways to resolving it through, like, mediation.
6 I don't -- I don't think that he -- that there was cause
7 for disciplinary action. It didn't seem to rise to that
8 occasion in my mind.

9 Q. But you were interviewed by the -- I think you
10 called them the antibias --

11 A. I'm not exactly sure what the committee called
12 itself. But yeah, I think they were investigating.

13 Q. Did you -- do you recall who was investigating,
14 the name of the individual?

15 A. Only from when I -- from looking through the
16 materials that I provided. Carmen something.

17 Q. Does Borges ring a bell?

18 A. Yes.

19 Q. That was her?

20 A. Yeah.

21 Q. So let's play a couple of clips from that. Bear
22 with me. It's not entirely easy to navigate through this,
23 at least I'm not that tech savvy. And let the record
24 reflect that I am going to play the -- a clip that starts

Matthew Rigilano

Page 133

1 at 18 minutes and 19 seconds in Exhibit 9, which is an
2 audio file of the October 18, 2020 teacher training
3 program meeting titled The Myth of the Color Blind
4 Classroom. Is that the correct characterization of that
5 meeting?

6 A. I think the text we were discussing was The myth
7 of the Color Blind Classroom. I don't think it was usual
8 to title the meeting as such, but that was the theme for
9 the day.

10 Q. I just want to make sure that the record reflects
11 that we're talking about the right meeting.

12 A. Yeah.

13 Q. And if at any point you think this is a recording
14 that's not of that meeting, just -- just tell me and we'll
15 go to try to sort that out, so let me just play this. I
16 think this will be audible.

17 MR. ALLEN: And for opposing counsel, I'll
18 obviously provide the recording. It's been produced in
19 discovery, but I'll provide it as part of the exhibits
20 that we've sent to the court reporter in electronic form
21 and all that. Okay?

22 So let's just listen. Again, this is 18 minutes
23 and 19 seconds. Sorry. I succeeded in getting it to
24 play, but now it's -- it was off the mark. Excuse me.

Matthew Rigilano

Page 134

1 Can you hear it?

2 (Audio plays.)

3 BY MR. ALLEN:

4 Q. Do you recall him asking that question?

5 A. Yeah.

6 Q. Do you find anything about his tone there to be
7 aggressive or unprofessional?

8 A. No.

9 Q. And I just want to -- that took him about, you
10 know, from 18 minutes, 19 second time stamp to 19 minutes
11 and 6 seconds to ask that question. Let's listen to the
12 response.

13 (Audio plays.)

14 BY MR. ALLEN:

15 Q. So now, it's 19 minutes and 45 seconds later.
16 Did it appear to you that he got an answer to his
17 question?

18 A. At that time?

19 Q. Right.

20 A. No.

21 Q. Is that professional to organize a writing
22 program meeting and not answer people's questions when
23 they ask them like that?

24 MR. SMITH: Objection to form.

Matthew Rigilano

Page 135

1 THE WITNESS: Um, well, I think there's all kinds
2 of reasons why people might be -- as I think I mumbled
3 there, I'm re-reading the quote.

4 BY MR. ALLEN:

5 Q. That was you?

6 A. Yeah, I think so, collecting their thoughts. I
7 mean, my -- my guess here or not a guess, but the way I
8 thought I read the situation is Zack says I'm not the one
9 who assigned this for a program reading or for a training
10 program, which kind of sort of had a bit of a tone like as
11 if it's sort of, you know, disapproval, and so that might
12 have been caught Lila and Grace sort of off as in like oh,
13 I'm not just answering a question about racism, but
14 asking -- answering a question about sort of other motives
15 for assigning the readings.

16 Q. When he said I didn't assign the reading, that
17 was true, though, right?

18 A. That is -- that was true.

19 Q. Is the truth somehow toxic to Liliana Naydan and
20 Grace Lee-Amuzie?

21 MR. SMITH: Objection to form.

22 THE WITNESS: I'm not -- I couldn't answer for
23 them.

24 BY MR. ALLEN:

Matthew Rigilano

Page 136

1 Q. Let's -- let's listen to the time stamp 19
2 minutes and 44 seconds. This is somewhat later after
3 the -- basically the crickets that we heard in response to
4 his first question.

5 (Audio plays.)

6 BY MR. ALLEN:

7 Q. So just without getting an answer, he asks a
8 follow-up.

9 You heard that, right?

10 A. Yes.

11 Q. Now, what about that question is unprofessional
12 to you?

13 A. I think the question itself, like the request to
14 see like a side by side of, you know, whatever acceptable
15 or unacceptable forms of teaching is not in and of itself
16 objectionable. I feel that the -- in the context here,
17 such a question is kind you would voice to the group,
18 like, you know, this is an interesting problem, right?
19 This is the problem that we're all sort of confronting.
20 What are various ways of answering the question?

21 By specifically, you know, kind of intently
22 asking it of Lila and Grace, it was almost as if, like,
23 you know, looking for -- looking for something like, you
24 know, an explicit, like, line in the sand or an explicit

Matthew Rigilano

Page 137

1 rule to follow, an explicit protocol, like, as opposed to
2 more of like a theoretical address. And so again, I think
3 that is a fine question to ask. And in a different
4 context, like, one might want to, you know, go to an
5 administrator and be like okay, this is the way I'm
6 teaching. We're being told, you know, or it's being
7 suggested that we teach a different way. What am I
8 supposed to do here? Seems like an administrative
9 concern, not so much sort of discussion concern.

10 Q. But you remember examining I think it was Exhibit
11 6 where Liliana Naydan as your program director of the
12 writing program expressed her interest in making
13 antiracist pedagogy or words to that effect part of
14 everything we do this semester. You remember that
15 language?

16 A. Yes.

17 Q. And you're saying it's unprofessional to address
18 a question to her directly about a program she put
19 together asking for examples of what it is he is supposed
20 to do? That's -- that's in your view improper?

21 A. I -- again, I think that the -- what he wants to
22 find out is -- is legitimate and I think the question is
23 legitimate. I thought the context for asking it was
24 unusual and, you know, created a bit of a chill in the --

Farrell Court Reporting

Matthew Rigilano

Page 138

1 the discussion.

2 Q. And of course, this is a discussion in which the
3 underlying things that you were reading were identifying
4 white supremacy, white people, white teaching as the
5 problem, right?

6 A. Right. Right.

7 Q. Do you think that would be insulting to someone
8 who is white?

9 MR. SMITH: Objection to form.

10 THE WITNESS: I mean, I was -- I was not
11 insulted.

12 BY MR. ALLEN:

13 Q. Would you tolerate at Penn State Abington
14 literature that talked about the problem with Black people
15 teaching in the Black classroom and speaking in Black
16 African-American English? Would you even tolerate that at
17 Penn State?

18 A. Tolerate -- what the -- what were the examples
19 again?

20 Q. Disparaging -- literature that was disparaging --

21 A. Disparaging.

22 Q. -- Black people, being Black in the classroom.

23 A. Certainly not.

24 Q. Manifesting blackness in the classroom, simply

Matthew Rigilano

Page 139

1 having melanin in their skin in the classroom. You would
2 not tolerate that, would you, sir?

3 A. I would not.

4 Q. Do you think anything about the -- not
5 withstanding whether you thought it was proper, do you
6 think he should be sanctioned for asking such a question
7 in the middle of a meeting that's specifically on these
8 readings that were assigned by these two specific
9 professional instructors of English and writing?

10 A. Um, I think that because it apparently did make
11 them uncomfortable -- I think they articulate that -- that
12 that's cause enough to create some -- again, some kind of
13 mediation, some way of resolving the issue. I don't know.
14 I haven't thought about sanctions or what would be
15 appropriate in that respect.

16 Q. Would you expect a professional writing professor
17 to scamper off to the DEI office or whatever that is, the
18 anti-bias office and demand that someone be punished for
19 asking that question?

20 MR. SMITH: Objection to form.

21 THE WITNESS: I don't know how the bias office
22 works.

23 BY MR. ALLEN:

24 Q. Let's listen to another clip, and maybe you can

Matthew Rigilano

Page 140

1 answer the question, then. This is at 23 minutes and 14
2 seconds. Sorry. Just backing up a little bit. It's very
3 hard to get this quite right.

4 (Audio plays.)

5 BY MR. ALLEN:

6 Q. What about his tone there was unprofessional,
7 harassing or bullying?

8 A. I think the reason that I found it to be
9 unprofessional -- I wouldn't say bullying, I don't think
10 that quite applies, but -- but confrontational in the
11 sense that he's sort of trying to make, the way I read it,
12 make Lila and Grace responsible for the reading. Um, it
13 seems to me like again, in this -- this context, if he was
14 interested in that, he would ask generally or say
15 generally you know what, I'm not seeing a lot of, you
16 know, evidence for the kind of things we would do. Like,
17 what do we think? Here, it's more like I need you to be
18 responsible for, like, the entire sort of discipline or
19 the whole movement of, you know, antiracist theory to
20 provide the examples, um, as opposed to something we would
21 kind of like assess collectively. And I mean, I -- I
22 don't know what I would say if I was put in that position.
23 Q. Weren't these very people encouraging everyone to
24 report racism wherever they saw it?

Farrell Court Reporting

Matthew Rigilano

Page 141

1 A. Yeah.

2 Q. As you listen to Zack, wasn't it clear that
3 that's what he thought he was doing?

4 MR. SMITH: Objection to form.

5 BY MR. ALLEN:

6 Q. Did you get the impression that Zack was calling
7 out a certain racist inclination in the literature and
8 materials that had been put together by his program
9 coordinator, Liliana Naydan, and Grace Lee-Amuzie?

10 A. I didn't get that impression. I thought it was
11 more about, like, if I don't, you know, subscribe to a
12 certain way of teaching, like -- or is that a problem,
13 right? 'Cause he's saying like compare side by side and
14 said what if I don't do that. I think he seemed to be
15 looking for clarity about, you know, where to -- what
16 his -- what he should do in the classroom.

17 Q. Well, it's a writing program --

18 A. Yeah.

19 Q. -- training session, right?

20 A. Yeah.

21 Q. Isn't that supposed to be what he's to take away
22 from the writing program meeting?

23 A. Um, I think -- I don't know. Training session is
24 a word I actually wouldn't have normally used for these

Matthew Rigilano

Page 142

1 kinds of things. I mean, they're more like discussions.

2 Q. Incidentally, the exhibit we examined with your
3 own contributions, that was the Exhibit 8 about antiracist
4 pedagogy, was that meant to be a kind of collection of
5 techniques or materials to be used in the classroom?

6 A. The -- the box that included a number of the
7 different assignments that --

8 Q. Right, with your exploration of the --

9 A. Yes.

10 Q. -- was it Phillis Wheatley?

11 A. That's right. Um, I think it was more to share
12 that -- yeah, the strategies because we teach different
13 fields. We couldn't really co-opt one another's work.
14 Obviously, I don't teach Shakespeare, but just the
15 different, yeah, broad strategies, yeah.

16 Q. It's meant to give people techniques that they
17 can adapt and use?

18 A. Yeah.

19 Q. And that was part of the writing program
20 meetings, too, correct?

21 A. Well, that was an English program meeting. But
22 in general, yeah. There was -- sometimes, they're more
23 like workshops where we are -- for instance, we'll be
24 writing something. And other times, there will be

Matthew Rigilano

Page 143

1 discussions.

2 Q. And this writing program meeting was -- was no
3 different in kind, was it?

4 A. Um, not by much. Only in the sense that I --
5 again, I don't think I was being like -- it wasn't like
6 this is a training for how to do it. It was more like
7 this is, you know, an article. Let's talk about it.

8 Q. Let's look at the -- another statement that he
9 makes, a question that he asks. It's at 24 minutes and 5
10 seconds. I'll see if I can --

11 (Audio plays.)

12 BY MR. ALLEN:

13 Q. Was that an unprofessional, bullying or harassing
14 comment to make?

15 A. I don't think it was bullying or harassing.

16 Q. We already discussed that it's also true,
17 correct? People were calling for uncomfortable
18 conversations on race?

19 A. Yes.

20 MR. SMITH: Objection to form.

21 BY MR. ALLEN:

22 Q. Including Liliana Naydan?

23 A. Yes.

24 Q. She just didn't wanna be uncomfortable herself,

Matthew Rigilano

Page 144

1 apparently, right?

2 MR. SMITH: Objection to form.

3 THE WITNESS: I don't know.

4 BY MR. ALLEN:

5 Q. Let's skip forward to time stamp 41 minutes and
6 10 seconds.

7 (Audio plays.)

8 BY MR. ALLEN:

9 Q. Is something bullying and harassing about that
10 question?

11 A. Um, not bullying. I do think that it continues
12 the same thread as the earlier questioning where it's
13 instead of asking, like, a specific question that, you
14 know, the group can talk about it, it was more like
15 holding Grace and Lila responsible for other people's
16 texts. Like, for instance, when he asks like well, why --
17 why are we reading this instead of something titled that,
18 it's like, I mean, I don't know if there is something
19 titled that. And also, like, one would have to ask the
20 author, really, right, why they titled it or why they
21 thought that was important.

22 I mean, it's true for sure that Lila and Grace
23 chose, they curated the texts, but I don't know if that
24 makes them responsible for the content and it felt like

Matthew Rigilano

Page 145

1 there was sort of supposition in the question that they
2 are responsible for the content. I feel like that is
3 where you -- where one gets the sense of sort of
4 discomfort or potentially like, you know disrespect.
5 If -- you know, like I said, I don't think harassment's
6 exactly. It's certainly uncomfortable.

7 Q. Well, if they had that point of view, why didn't
8 they -- to your knowledge, why didn't they respond?

9 A. I don't know. It's -- I don't know.

10 Q. Did you ever feel uncomfortable disagreeing with
11 Liliana Naydan on these issues on black linguistic
12 justice, white supremacy, white privilege, the whole
13 litany of antiracist linguistics, however she
14 characterized it?

15 A. I did not feel uncomfortable.

16 Q. You never felt that you couldn't speak your mind?
17 Did you ever fear if you dissented from these programs
18 that they were peddling in this writing program meeting
19 that you would be subject to at least disapproval and at
20 worst discipline?

21 A. Not really.

22 Q. I wanna skip forward to 45 minutes and 16 seconds
23 through the meeting.

24 (Audio plays.)

Matthew Rigilano

Page 146

1 BY MR. ALLEN:

2 Q. Was that a harassing and bullying question?

3 A. I think my response probably is the same as the
4 previous one, yeah.

5 Q. And do you remember him gesticulating wildly at
6 the time he asked that question?

7 A. I don't really remember the visuals.

8 Q. Let's skip forward to 47 minutes and 3 seconds.

9 A. Could you say that time stamp again?

10 Q. 47 minutes and 3 seconds in Exhibit No. 9.

11 (Audio plays.)

12 BY MR. ALLEN:

13 Q. Can you tell me who had responded to his inquiry
14 there? Do you recognize the voice?

15 A. I think that was Carolyn.

16 Q. Carolyn?

17 A. I can't recall her last name at present.

18 Q. Was she a member of the writing program?

19 A. Yes.

20 Q. What was her position?

21 A. Um, I'm not sure or assistant teaching professor.

22 Q. She seemed pretty capable of responding to Zack,
23 right?

24 A. Yeah.

Matthew Rigilano

Page 147

1 Q. Did she sound insulted to you when you just
2 listened to that?

3 A. Not that I could tell.

4 Q. And if I ask again is that a bullying and
5 harassing tone of voice that he was using right then, how
6 would you respond?

7 A. Not in so much.

8 Q. And I think your answer will be the same. But
9 was he gesticulating wildly, as such as you remember it at
10 that time?

11 A. I can't. Yeah, I don't remember the visuals. I
12 did -- I mean, I don't think again that it was sort of
13 bullying or harassing, but these instances did seem like
14 they were kind of accumulating in a certain way.

15 Q. Is that wrong to continue to ask questions that
16 no one is answering and they accumulate? I mean, maybe
17 they could have answered the question the first time he
18 asked it, right?

19 MR. SMITH: Objection to form.

20 THE WITNESS: It's possible that it would have
21 gone differently.

22 BY MR. ALLEN:

23 Q. But they didn't, did they.

24 A. I remember -- are there answers? I guess you

Matthew Rigilano

Page 148

1 can't testify.

2 Q. You heard roughly 30 seconds of crickets when he
3 asked his first question.

4 A. But there was some other --

5 MR. SMITH: Objection to form.

6 THE WITNESS: -- windows between the clips that I
7 can't recall if there were any other answers.

8 BY MR. ALLEN:

9 Q. Without a doubt, other people were participating
10 in the conversation and had their own observations. I'm
11 not denying that. But when he asked his question first,
12 you heard the complete nonresponse. He tried again and
13 addressed Liliana Naydan and Grace Lee-Amuzie directly,
14 and then he still got no response, correct?

15 A. That's correct.

16 Q. Isn't that unprofessional of the program
17 coordinators?

18 A. That's a tough call. I mean, on the one hand, I
19 think, you know, if they felt the question was sort of too
20 personal as not addressing the ideas, but addressing them,
21 they might have been disinclined to -- to talk in a
22 meeting such as this. Again, if it was like a scheduled
23 meeting to, like, discuss some of these issues, I -- I
24 doubt that that -- this would have been -- it would have

Matthew Rigilano

Page 149

1 worked on the same way.

2 Q. Liliana Naydan and Grace Lee-Amuzie are full
3 grown women, right?

4 A. Yes.

5 Q. They're not toddlers?

6 A. No.

7 Q. They're not children, right?

8 A. No.

9 Q. They're intellectuals in this area and even
10 publish on it, correct?

11 A. Correct.

12 Q. Do you have any knowledge that they're especially
13 fragile and can't handle criticism?

14 A. No special knowledge, no.

15 Q. Now, I believe you said -- did you say Grace
16 Lee-Amuzie is not white, identifies as Asian of some sort?

17 A. Correct.

18 Q. Do you know what national origin or heritage?

19 A. I believe she is Korean American.

20 Q. Uh-huh.

21 A. However, I'm not positive.

22 Q. Do you know if she suffers from any kind of
23 Korean fragility of some sort?

24 A. I'm --

Matthew Rigilano

Page 150

1 MR. SMITH: Objection to form.

2 THE WITNESS: -- not aware.

3 BY MR. ALLEN:

4 Q. How about Liliana Naydan? Do you know what
5 heritage, national origin, race she claims to be?

6 A. Um, I think she has -- she has ethnic roots in
7 Ukraine.

8 Q. So Eastern Europe?

9 A. Uh-huh.

10 Q. Would you characterize her as white, then?

11 A. Yes.

12 Q. Does she suffers from some kind of white
13 fragility that she can't stand criticism, to your
14 knowledge?

15 A. Not to my knowledge.

16 Q. Thank you. I'm gonna skip forward to 49 minutes
17 and 49 seconds. Sorry. I got it there all like a good
18 little boy, and it started on its own without listening to
19 me.

20 (Audio plays.)

21 BY MR. ALLEN:

22 Q. Right here. So again, all the questions I asked
23 before. It sounds to me like you had previously said he
24 should pose his questions in more general terms, correct?

Matthew Rigilano

Page 151

1 Wasn't he doing that right there?

2 A. I think that was an instance of the things kind
3 of turning in that direction.

4 Q. And do you think there was anything harassing or
5 bullying about that question?

6 A. No.

7 Q. The last clip I'm gonna have you listen to is his
8 last intervention in the conversation at 51 minutes and 34
9 seconds.

10 And just to close the loop in that 49 minutes and
11 49 seconds, you don't recall in association with that any
12 wild gesticulation or insulting gestures that Zack De
13 Piero made towards the program hosts?

14 A. I don't recall that.

15 Q. Thank you. So again, this is at 51 minutes and
16 34 seconds.

17 (Audio plays.)

18 BY MR. ALLEN:

19 Q. Is he yelling in that clip?

20 A. No.

21 Q. Is he bullying and harassing anyone in that clip?

22 A. No.

23 Q. If you knew that your employer was potentially
24 going to break the law by introducing some kind of illegal

Matthew Rigilano

Page 152

1 policy, wouldn't you feel obligated to bring that to your
2 supervisor's attention?

3 MR. SMITH: Objection to form.

4 THE WITNESS: In general terms, yeah.

5 BY MR. ALLEN:

6 Q. So is there something you think he should have
7 been punished for by bringing that up at the end of the
8 meeting?

9 A. Um, I'm not sure if the meeting was the venue for
10 this kind of, you know, concern that he had, especially
11 there at the end. It seems like it was a law breaking
12 thing looking at first. But worthy of punishment? No.

13 Q. Were you aware that Zack De Piero submitted a
14 complaint to the appropriate office at Penn State on
15 account of racial harassment at Penn State due to the same
16 kinds of issues that he was bringing up in that meeting?

17 A. At the time of that meeting, I don't think I knew
18 that.

19 Q. Eventually you learned it?

20 A. Yeah, somehow.

21 Q. Are you aware of anything that Penn State did
22 about it?

23 A. Um, no.

24 Q. Were you interviewed in connection with Zack De

Matthew Rigilano

Page 153

1 Piero's complaint against his colleagues at Penn State for
2 racial harassment?

3 A. No.

4 Q. I think I asked this, but I can't remember. Do
5 you remember him at the end gesticulating in any kind of
6 insulting way with his hands, his facial expression?

7 A. I don't recall any visuals. When you teach all
8 day on Zoom, we kind of have no memory for --

9 Q. If he was doing something insulting with his
10 hands, with his facial expressions, don't you think that
11 would have stood out in your mind?

12 A. Um, no. One, just because it's been a long time
13 and -- yeah. I mean, it's like I remember very little on
14 Zoom for whatever reason.

15 Q. Well, certainly, if he flipped off his program
16 coordinator, you would have remembered that, right?

17 A. Yes. If something like that were to have
18 happened, yes.

19 Q. Do you recall being interviewed by Carmen
20 Borges -- I believe we already established that you did --
21 in connection with a complaint made about Zack for
22 precisely his behavior in this meeting?

23 A. Yes.

24 Q. Did they ask you about whether you remember him

Matthew Rigilano

Page 154

1 gesticulating?

2 A. I don't remember.

3 Q. Did Carmen Borges ask you about Zack's tone?

4 A. Yeah.

5 Q. And what did you tell her?

6 A. I think largely what I've said here, that it was
7 intense and confrontational. I don't remember the words I
8 used.

9 Q. Is it wrong to be confrontational in an academic
10 meeting over disagreements as long as you keep your voice
11 in a measured and professional tone?

12 A. Um, I don't know. I mean, it's -- I think it's a
13 genuine gray area. I think it's not the norm for the
14 meetings, which is what made it unsettling. As to whether
15 there should be more confrontation such as in meetings, I
16 feel like that's a discussion.

17 Q. And you realize that Penn State is a public
18 institution; in other words, an agency of the state
19 government of Pennsylvania?

20 MR. SMITH: Objection to form.

21 THE WITNESS: Yeah. Yes.

22 BY MR. ALLEN:

23 Q. Would you agree that you were discussing matters
24 of public concerns in that meeting?

Farrell Court Reporting

Matthew Rigilano

Page 155

1 A. I think in general, yes.

2 Q. And Mr. De Piero wasn't talking about his own
3 particular administrative role in that meeting, was he?

4 A. I don't believe he had an administrative role at
5 that time.

6 Q. You would agree he was trying to engage in the
7 larger ideas that were embodied in the text that had been
8 distributed by the program coordinators, right?

9 A. Yes.

10 Q. I just want to finish up this about the -- the
11 investigation. I want to introduce an Exhibit 10, so go
12 back to paper. This was actually from the documents you
13 produced, Professor Rigilano. I'll have that marked
14 Exhibit 10. It is Bates stamped Rigilano 00042 as the
15 first page. I'm providing a copy to your counsel.

16 (Exhibit 10 was marked for identification.)

17 BY MR. ALLEN:

18 Q. Do you see the e-mail that begins the top of this
19 page is from you, correct?

20 A. Yes.

21 Q. From your institutional e-mail?

22 A. Yes.

23 Q. And it's to Carmen Borges, who we identified as
24 the investigator?

Matthew Rigilano

Page 156

1 A. Yes.

2 Q. So is it -- is it correct that this document
3 reflects your participation in the investigation?

4 A. Yes.

5 Q. And in fact, it looks like you organized some
6 kind of meeting in the morning of October 21, 2021, right?

7 A. Yes. She I think originally contacted me, and
8 then we -- we organized a Zoom meeting.

9 Q. And so within three days of the clips being
10 uttered that we just said, they were swinging into action
11 and investigating and interviewing at least you, correct?

12 A. Yes.

13 Q. Would you characterize that as pretty swift
14 action?

15 A. Yes.

16 Q. And then if you skip down to the page marked
17 Rigilano 43, could you describe for the record what this
18 is and what role it played in the investigation so far as
19 you were participating in the investigation?

20 A. Sure. I only remember it from -- from reading
21 the e-mails, but it's -- I believe what transpired was
22 that after the meeting on Zoom, um, Carmen had maybe asked
23 about specifically what the nature of the questioning was,
24 and I obliged by sending the -- the agenda with the

Matthew Rigilano

Page 157

1 highlighted portion and then my sort of italicized, you
2 know, summary of -- of how that was initiated.

3 Q. So the italics were actually text that you wrote
4 yourself?

5 A. Yes.

6 Q. And the highlighting, is that highlighting you
7 added yourself?

8 A. Yes.

9 Q. And the highlighting is on the first quote, hash
10 tag number one, correct?

11 A. Right, related to the first clip you played.

12 Q. And why did you highlight that?

13 A. I think that was the basis of the first question
14 that Zack asked at the meeting. He -- he mentioned
15 something about unwittingly, et cetera, and this was the
16 line.

17 Q. Thereby unwittingly reproduce racist discourses
18 and practice in our classrooms, right?

19 A. Correct.

20 Q. And that's referring to the -- I mean, within the
21 context of a piece titled White Instructors Confront White
22 Privilege in their classrooms, that's about white
23 instructors with their supposed white privilege
24 unwittingly reproducing racist discourse and practices in

Matthew Rigilano

Page 158

1 their classrooms?

2 A. Yes. That's what the article is about, yeah.

3 Q. That's how you understand it, too? And there
4 wasn't any comparable discussion of how, I don't know,
5 Hispanic professors might reproduce Hispanic privilege in
6 their classrooms, was there?

7 A. No.

8 Q. Or Hispanic racism towards, I don't know, Indian
9 Americans?

10 A. No.

11 Q. There wasn't any discussion of that, was it?

12 A. No.

13 Q. Maybe Indian Brahmins racism towards lower
14 classed Indians. Anything like that --

15 A. No.

16 Q. -- discussed?

17 A. No.

18 Q. About how long did that interview last?

19 A. I don't know for sure. I remember it being
20 significant, maybe an hour.

21 Q. And I think you've already testified you
22 basically said nothing different in substance that what
23 you've testified to here today?

24 A. Not that I can remember. I mean, if there was a

Matthew Rigilano

Page 159

1 transcript of it, you know, I agree to that, but I'm
2 pretty sure my memory hasn't changed much. I mean, I
3 probably remember the visuals then 'cause it was fresh.
4 But now, I don't.

5 Q. And this would have been, again, only three days
6 later, so everything would have been relatively fresh in
7 your mind?

8 A. Correct.

9 Q. And Zoom and Covid brain had not yet set in?

10 A. Exactly. There's a clock on that.

11 Q. Okay. So I don't have any further questions on
12 that. It's 2:30.

13 MR. SMITH: Would you mind if we take a --

14 MR. ALLEN: Can we go off? Yeah.

15 VIDEOGRAPHER: Off the record, 2:26.

16 (A break was held.)

17 VIDEOGRAPHER: We're back on the record, 2:37.

18 BY MR. ALLEN:

19 Q. We've reached the best part of the deposition for
20 you, Professor Rigilano, the end. Well, I presume.

21 (Exhibit 11 was marked for identification.)

22 BY MR. ALLEN:

23 Q. I just wanted to ask you a question. Do you
24 recognize this document that I've marked as Exhibit 11?

Matthew Rigilano

Page 160

1 A. It appears to be text messages between me and
2 Zack. I don't have any of my old text messages, so I
3 don't really recognize them, but it looks to be the case.

4 Q. And this is Bates stamp ZDP 00206, so it comes
5 from Zack De Piero's production, I'm gonna represent to
6 you. You don't have any reason to believe that these are
7 inaccurate records of your text messages with my client,
8 Zack De Piero, do you?

9 A. No.

10 Q. And I want you to fast forward to page 18, but
11 I'll get you a Bates stamp number. It's 223.

12 A. Okay.

13 Q. So these appear to be text messages. If you scan
14 up from January 27, 2021, right? Do you see that at the
15 top of the previous page, ZDP 0222?

16 A. Hold on. Okay. Yes.

17 Q. So this is January 27, 2021. And what are you
18 and Zack talking about?

19 A. I have no idea. On 223?

20 Q. On 223, correct.

21 A. Okay. I'll read through it here. Huh.
22 Interesting.

23 Q. If I represent that I -- that -- excuse me. If I
24 represent that you're talking about the scholar of writing

Farrell Court Reporting

Matthew Rigilano

Page 161

1 that we talked about earlier, Asao Inoue, is it?

2 A. Asao Inoue.

3 Q. Sorry.

4 A. Yes. Asao Inoue.

5 Q. Asao Inoue?

6 A. Asao Inoue.

7 Q. Yes. Does that help refresh your memory of what
8 he's talking here, them bringing Asao Inoue, sorry, to
9 campus?

10 A. Yes. This must be in relation to that.

11 Q. And then you say -- your -- your comments are on
12 the left hand side of this text message string, right?

13 A. Yes.

14 Q. And of course, the bubbles on the right side are
15 Zack's as the person who holds the phone that has this --
16 these messages on it?

17 A. Huh.

18 Q. Right? And you say wow, I absolutely won't
19 mention this. Excuse me. Wow, I obviously won't mention
20 this. I also have criticism of some aspects of his work,
21 meaning Inoue. As we have discussed, I think you should
22 do what you think is right, but I am not sure you will
23 meet a receptive audience for that request. Is that a
24 fair reading of that message?

Farrell Court Reporting

Matthew Rigilano

Page 162

1 A. Correct.

2 Q. So you're warning Zack that he's going to make
3 himself unpopular. Is that fair?

4 A. Um, well, just simply that he won't be received,
5 like -- or I think that it was, you know, pretty much the
6 case that by this point, the decision to invite had -- had
7 already taken place and money acquired and things of that
8 nature. And clearly, you know, I think as we've
9 discussed, I think Lila's supportive of Inoue's work, so I
10 think I'm just referring to the fact that I don't think
11 he'd get a good -- I don't think his request would --
12 would go anywhere.

13 Q. And so voicing criticism of this author is not
14 going to be well received?

15 A. Um, I don't know about the criticism, but the --
16 the request to have it canceled I don't think would be
17 received well.

18 Q. Let's move forward to page 28, and that's Zack De
19 Piero Bates number 233.

20 A. Okey doke.

21 Q. And I just give you a second to review the
22 context there. If you scan up to the three pages
23 previous, ZDP 230, you'll see that these are from February
24 12, 2021.

Farrell Court Reporting

Matthew Rigilano

Page 163

1 A. Okay.

2 Q. Just tell me when you've had a chance to review
3 your messages.

4 A. Yes.

5 Q. So just to cut to the chase, you're talking about
6 these sort of antiracist grading practices that are being
7 discussed at this time in your department. Is that
8 accurate?

9 A. I'm not sure this was -- that this was about
10 grading practices. I don't recall. I mean, it was
11 obviously about something having to do with antiracist
12 pedagogy as he mentions in the prior message.

13 Q. Fair enough. And on the blue bubble that begins
14 check it out, it says early on in that meeting, Marissa
15 proudly declares that she led an antiracist English
16 department meeting, right? So you're discussing that
17 general topic?

18 A. Uh-huh.

19 Q. In your bubble on the left side says this is why
20 I find it very hard to pipe up in this meeting -- this
21 meetings. Not sure -- not -- excuse me. Let me back up
22 and try that again.

23 This is why I find it very hard to pipe up in
24 this meetings not just re: antiracism because it rarely

Matthew Rigilano

Page 164

1 feels like a genuine convo, more like a piece of theater
2 for which I do not have a script. All talking is improv.
3 Could make a splash, but very likely to bomb. Did I read
4 that correctly?

5 A. Correct.

6 Q. So you testified earlier that you never felt
7 inhibited in speaking in meetings about antiracism,
8 linguistic justice, black linguistic justice, white
9 supremacy, white privilege, et cetera, et cetera in its
10 various forms, correct?

11 A. Correct.

12 Q. Yet, here in I believe this was early 2021, that
13 seems to me you very expressly stated that you felt
14 uncomfortable speaking in any critical way about these
15 topics at least publicly to your colleagues?

16 MR. SMITH: Objection to form.

17 THE WITNESS: Yeah. Um, I'm not really sure
18 precisely what I'm referring to here. It's true. I say
19 it's very hard to pipe up. I'm not sure what meetings I'm
20 referring to, honestly. Zack says Marissa proudly
21 declares she lead an antiracist English department
22 meeting, so there was a meeting in which Marissa discusses
23 her efforts in antiracism.

24 BY MR. ALLEN:

Farrell Court Reporting

Matthew Rigilano

Page 165

1 Q. To be antiracist?

2 A. Yeah.

3 Q. Do you remember that meeting?

4 A. I don't. And I find it hard to believe that I
5 would say this about writing program meetings 'cause I
6 typically do pipe up about all kinds of matters, so I
7 don't know if this was a -- I think this is a -- you said
8 this was, yeah, 12, 2/12.

9 Q. February 2021.

10 A. Yeah. Maybe it was a larger scale administrative
11 meeting, but yeah. Indeed, whatever the context is, as it
12 says not just regarding antiracism, but presumably other
13 things I find it hard to pipe up.

14 Q. Those are your words, right?

15 A. Yeah.

16 Q. And you wouldn't -- you wouldn't lie just to make
17 Zack somehow befriend you or some feel like you had to
18 placate him in this sense, do you?

19 A. Um, I wouldn't lie. But, I mean, you know, over
20 the long course of a -- of a friendship, you know,
21 sometimes you give more sort of credence to people's --

22 Q. Sure.

23 A. -- feelings and thoughts and, you know.

24 Q. I'm talking about your feelings and thoughts

Matthew Rigilano

Page 166

1 about this particular --

2 A. Right. No. I know, yes. I don't think I was
3 just placating him.

4 Q. Right.

5 A. But I also -- I'm not totally sure what the
6 context of the meeting -- the ones I find hard to pipe up
7 in.

8 Q. And you're saying you can't remember?

9 A. I can't remember. And I -- I -- I would be
10 surprised if I was talking about our writing program
11 meetings.

12 Q. But the only reference on the right side in
13 Zack's messages is to some kind of meeting in which
14 Marissa being who?

15 A. The chair or the -- at this point, just a faculty
16 member in English who ran the workshop that we had
17 discussed.

18 Q. And this is Marissa Nicosia?

19 A. Correct.

20 Q. And she was proudly declaring some kind of
21 antiracist English department meeting, correct?

22 A. Correct.

23 Q. That's the preceding reference.

24 A. If there's a meeting in which Marissa proudly

Farrell Court Reporting

Matthew Rigilano

Page 167

1 declares that she led. It says early on in that meeting,
2 Marissa proudly declares that she led an antiracist
3 English department meeting. So it must have been like
4 maybe a broader meeting when Marissa was present and she
5 was, you know, declaring about the fact that she had run
6 this other meeting. I don't know if the meeting in
7 question is a writing program meeting or something else.
8 I mean, I know it's a --

9 Q. As you sit here today, you have no memory of what
10 the meeting particularly was that you referred to there?

11 A. No. I mean, it could have been a -- we could
12 have just left a writing program meeting and that's what I
13 was, in fact, referring to. I feel like it's weird that I
14 would say it's hard to pipe up, 'cause I very often do.

15 Q. And you say --

16 A. But it is true in larger scale meetings, I'm not
17 particularly vocal.

18 Q. Right. And you say I find it hard to pipe up in
19 this meetings. I think that's a typo or auto correct.

20 A. Yeah. These meetings.

21 Q. Probably these meetings. Not just re:
22 antiracism. So isn't it proper to understand from what
23 you said you find it very hard to pipe up in these
24 meetings about antiracism as well as other things at Penn

Matthew Rigilano

Page 168

1 State Abington?

2 A. In this context, that seems to be what I'm
3 suggesting.

4 MR. ALLEN: Okay. I'm gonna pass the witness to
5 you now.

6 MR. SMITH: Okay. Let's take a short break
7 before I jump into that. I thought you had a lot more.

8 VIDEOGRAPHER: Off the record, 2:50.

9 (A break was held.)

10 VIDEOGRAPHER: We're back on the record, 2:55.

11 BY MR. SMITH:

12 Q. Good afternoon, Dr. Rigilano.

13 A. Good afternoon.

14 Q. Just a couple quick questions. I think we'll be
15 wrapping up here. In relation to your employment at Penn
16 State, have you ever felt discriminated against as a white
17 faculty member?

18 A. No.

19 Q. Earlier, we talked about several of the writing
20 program meetings at Penn State Abington. In relation to
21 the writing program meetings that you attended, did you
22 ever feel that the materials discussed at any of those
23 meetings were racist against white people?

24 A. No.

Farrell Court Reporting

Matthew Rigilano

Page 169

1 Q. Something I just wanted to clarify from earlier.
2 There was some questions about attendance at the writing
3 program meetings. Were there full-time non-adjunct
4 faculty who regularly did not attend those meetings?

5 A. Yes.

6 Q. Is attendance taken at those monthly writing
7 program meetings?

8 A. No.

9 Q. In relation to the October 18, 2021 writing
10 program Zoom meeting that was talked about earlier, at any
11 time did Dr. De Piero request your consent to record that
12 meeting in any way?

13 A. No.

14 Q. Prior to this lawsuit, were you aware whether
15 Dr. De Piero recorded that meeting?

16 A. No.

17 Q. At any point in time during that same meeting,
18 was Dr. De Piero's behavior disruptive to the meeting?

19 A. Um, I think the initial line of questioning sort
20 of disrupted the, you know, general flow. But I think as
21 we heard, it became a topic of conversation.

22 MR. SMITH: I think that's all I have.

23 MR. ALLEN: No further questions.

24 VIDEOGRAPHER: This concludes the videotaped

Matthew Rigilano

Page 170

1 deposition. The time is 2:58. We're now going off the
2 record.

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Farrell Court Reporting

C E R T I F I C A T I O N

I, Vicki Mengel, Court Reporter, certify that the following is a true and accurate transcript of the foregoing deposition/hearing/arbitration, that the witness was first sworn by me at the time, place, and on the date herein before me set forth.

I further certify that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.



VICKI MENGEL

Court Reporter and Notary Public

A	achieve 57:2	advocating 128:1	56:20 58:4,9,18	animus 66:1
A-I-M-S-S 33:4	acknowledge 71:4	aegis 47:3	59:2 60:9 61:2,19	Anissa 51:18
a.m 1:17 4:5 100:8	acquired 162:7	African 75:6 83:23	62:2,12 65:19	Annisa 48:20,21
100:22 109:19	acronyms 66:24	African- 67:1 89:12	69:17,23 70:23	announcement
AAE 67:1	action 84:15,17,19	African-American	71:20 74:12 75:9	26:11
AAV 66:22	132:7 156:10,14	66:19,21 69:24	79:6,17,20,24	annual 16:18 30:1
AAVE 67:2	actively 84:4	72:22 74:7 75:4,5	80:5,10 84:7,13	30:4 33:24 82:13
ability 5:15 35:5	activities 16:18	112:18 138:16	85:22 86:6 87:14	another's 142:13
60:5	activity 27:19	African-Americans	88:14,18 92:4,11	answer 6:11 7:7
Abington 11:9,11	ad 49:19 50:5,22	67:5	92:13 95:5,10,13	67:18 68:6 74:1
11:19 16:24 26:21	adapt 142:17	afternoon 168:12	95:21 96:3,6	131:13 134:16,22
28:15,20 30:8	added 157:7	168:13	97:12 100:16	135:22 136:7
36:23 41:16 44:15	addition 25:7	agency 64:12	105:13,16 108:1,4	140:1 147:8
48:10 49:2 51:20	address 37:2 80:14	154:18	108:12,17,21,24	answered 147:17
53:6,9,14,21 54:6	81:20 103:5	agenda 3:13,14	109:8,10,14 113:6	answering 135:13
54:15 55:23 56:15	131:10,11,23	24:21 40:3 41:6	117:13 123:16,20	135:14 136:20
57:20,24 58:1,11	137:2,17	77:1 103:19	124:22 126:15	147:16
58:14 64:8,12,17	addressed 105:23	156:24	133:17 134:3,14	answers 147:24
74:17 77:17 78:18	106:14 110:7	aggressive 134:7	135:4,24 136:6	148:7
80:8 89:12 91:18	114:19 115:12	ago 15:14	138:12 139:23	anthropology 36:9
109:24 114:19	130:19 148:13	agree 32:3 65:12	140:5 141:5	anti-bias 127:3
115:1 120:1	addressing 76:24	67:3,7 68:19	143:12,21 144:4,8	139:18
123:14 126:9	127:16 148:20,20	86:14,21 90:18	146:1,12 147:22	anti-Black 115:15
138:13 168:1,20	adjunct 13:1,4,5	103:3 112:2,8,19	148:8 150:3,21	antibias 132:10
Abington's 57:19	36:20 42:12	113:20 115:5	151:18 152:5	antiblack 84:24
able 48:6 75:21	adjuncts 14:4 25:13	129:18 154:23	154:22 155:17	89:6 91:15
109:12	26:7	155:6 159:1	159:14,18,22	antiblackness 89:5
absolutely 50:13	administration	agreed 106:4	164:24 168:4	antiracism 65:3,9
69:13 161:18	47:9	agreement 102:21	169:23	98:6 101:13
academic 18:21	administration's	Ah 52:14	aloud 99:9	163:24 164:7,23
44:13 64:9 68:20	58:7	ahead 63:10 78:12	America 76:10	165:12 167:22,24
68:24 88:8 89:1	administrative	85:8	78:21	antiracist 65:22
106:11 130:23	17:17 131:24	AIMSS 33:3,7	American 21:1 35:3	81:8 108:6 110:7
131:8 154:9	137:8 155:3,4	ain't 82:5	62:20 67:2 71:7	111:1 137:13
accent 70:8	165:10	al 1:8 4:8	72:21 79:12 83:23	140:19 142:3
acceptable 136:14	administrator	Allen 2:3,4 3:7 4:13	89:13,21 91:14	145:13 163:6,11
accepted 69:19	20:23 137:5	4:13,24 5:1,6 6:22	111:18 112:6,9,21	163:15 164:21
73:21 88:9 89:23	administrators	8:2,6,9 10:21,24	113:1,5,10,13,16	165:1 166:21
accorded 76:10	78:2	11:3,5 14:19	113:19,24 121:4,5	167:2
account 61:22	adopt 72:11 73:4	15:11 22:8,18	121:9,18,19	anybody 125:11
102:17 152:15	73:19	23:3,11 26:19	149:19	anyway 74:1
accumulate 147:16	adopted 68:13	27:6 29:13 31:5,9	Americans 67:15	apologize 88:12
accumulating	advertised 124:11	34:2 37:17 39:4,7	68:7,14 74:8 75:6	apparently 41:10
147:14	advice 7:16 8:4	44:24 45:11 50:9	121:19 158:9	84:17 87:23 99:16
accurate 113:4	advising 24:18	50:13,19 52:1	Angelou 71:22	139:10 144:1
163:8	32:17	53:24 54:5 56:11	angles 30:19	appear 134:16

160:13 APPEARANCES 2:1 appeared 10:4 appears 82:1 116:18 160:1 applied 33:11 64:8 64:17 123:13 applies 89:24 140:10 apply 12:14 97:4 107:2 applying 73:17 104:12 approach 35:13 44:12 92:1 122:18 122:23 123:2 appropriate 139:15 152:14 approximately 26:3 area 36:21 78:5 131:18 149:9 154:13 argue 70:10 119:11 arguing 119:13 argument 119:16 119:17 122:11 Arizona 43:16 array 55:11 article 143:7 158:2 articulate 139:11 articulated 54:24 articulation 107:6 arts 16:11,12 18:5 18:22 Asao 43:14 47:5,24 48:1 161:1,2,4,5,6 161:8 ascribed 60:20 Asian 62:20 77:11 149:16 aside 24:7 45:12 49:10 64:22 asked 7:12 15:20 146:6 147:18 148:3,11 150:22	153:4 156:22 157:14 asking 24:2 49:22 52:17 58:6 75:10 85:16 94:7 96:3 96:11,11 97:9 105:9 116:8 120:23 129:23 134:4 135:14 136:22 137:19,23 139:6,19 144:13 asks 136:7 143:9 144:16 aspect 65:22 aspects 35:2 161:20 asserts 114:9 assess 140:21 assessment 41:13 72:10 assign 23:23 135:16 assigned 43:9 45:7 131:5,10 135:9 139:8 assigning 44:16 135:15 assignments 142:7 assistant 12:10,11 12:20 13:16 23:17 23:17 24:6 25:24 26:15 28:9,19 30:10 31:18,20,22 33:1,10,15,18 41:24 42:8,10 146:21 associate 11:12 12:7,12,13 13:19 14:7 25:24 41:24 associated 26:1 64:12 85:19 109:1 110:24 association 109:13 151:11 assume 7:11 45:1 71:13,21 77:17 78:24 101:4 assumed 117:3	assuming 38:1 43:1 95:18,21 97:10 assumption 66:11 68:4 assure 81:12,14 86:1 Astounding 121:22 asynchronizly 120:21 attached 3:24 10:19 65:6 attachments 3:19 109:1 attend 25:22 46:22 47:1,10 107:17 169:4 attendance 127:8 169:2,6 attendant 43:5 attended 47:7 51:11 168:21 attending 28:7 49:10 54:13,23 57:13 attention 52:11 81:18 152:2 attest 25:15 attorney 5:2 6:5,7 7:16,23 8:4 95:10 98:9 attorneys 39:21 100:18 attributes 60:13 audible 133:16 audience 73:24 116:8 161:23 audio 3:20 123:21 133:2 134:2,13 136:5 140:4 143:11 144:7 145:24 146:11 150:20 151:17 August 80:24 92:17 93:3,19 94:19 95:24 98:22 99:3 100:7,22 105:18	author 112:21,21 113:1,2,5,10,13 113:16 119:23 144:20 162:13 authoritatively 72:6 authority 23:18,20 authors 112:15 113:21 119:21 auto 167:19 automatically 78:19 79:3,5,8 available 55:19 88:5 award 3:18 105:24 awarded 12:24 106:19 aware 31:7 48:8 54:16 63:12 103:10 121:23 150:2 152:13,21 169:14 awareness 73:14 <hr/> B <hr/> B 3:10 B-A-E-R 16:4,5 back 5:10 20:12 22:15 24:2 29:4 34:11 43:2 46:20 50:17 79:23 87:6 96:5 102:19 120:17 123:19 127:1,22 155:12 159:17 163:21 168:10 background 10:14 11:7 87:9 125:8 backgrounds 37:23 46:14 76:5 77:24 backing 140:2 Baer 15:16 16:2,6 23:13 29:20 Baer's 15:17 balance 75:16 Baldwin 71:11	111:22 Baldwin's 71:14 based 11:22 38:21 45:5 56:4 58:10 60:2 65:14 90:22 baseline 60:1 basic 35:13 basically 13:14 24:2 51:15 68:20 105:2 136:3 158:22 basis 27:4 61:21 157:13 Bates 31:6,7 39:21 40:1 50:21 80:6 92:6,10,14 100:17 105:19 108:8,9,14 108:18 109:9 155:14 160:4,11 162:19 bathroom 79:16 Bear 132:21 Beatles 30:15 beauty 71:14 becoming 97:16 befriend 165:17 began 14:3 127:12 beginning 5:3 49:18 begins 61:4 94:6 96:10 108:5 118:17 155:18 163:13 behalf 4:16 6:17 behavior 132:3 153:22 169:18 beings 35:1,14 beliefs 117:7 believe 15:14 18:11 19:2,18 20:3 26:8 29:7 30:14 33:1,3 36:24 39:5 43:16 44:4 48:1,13 49:24 55:6,17 56:6 59:16 61:13 62:20 73:13 83:22 84:3 85:9,10
---	---	--	--	--

96:13 107:18 108:24 109:16,22 120:5 123:23 132:2 149:15,19 153:20 155:4 156:21 160:6 164:12 165:4 bell 132:17 belong 16:22 best 17:11 40:7 63:5 159:19 better 97:15 122:7 beyond 22:14 57:12 131:8 bias 116:9,24 117:4 117:10,18,21,22 126:21 139:21 Biblical 122:1 big 85:18 87:8 88:24 91:5 127:7 BiPOC 61:5,11 62:6,8 Biracial 61:13 bit 10:13 11:6 17:1 21:24 93:9 101:20 135:10 137:24 140:2 black 37:11 44:16 44:20 45:7 54:21 60:14,17 61:15 66:18 69:18 70:12 71:5 72:1,8,21 74:8 77:8 79:1 80:2 81:2 82:6 83:1,12,17,18 84:8,14,15,23,24 86:1,10 87:8,8,21 88:24 89:8,17 90:21 93:6 94:21 95:4,6,19,21 96:21 97:6 98:2 99:22 103:13 107:5 112:5,21 113:1,5,22 114:20 114:21 115:2 119:8,15 122:12	138:14,15,15,22 138:22 145:11 164:8 blackness 138:24 blanking 15:15 Blind 133:3,7 block 84:15 87:8,21 88:24 blow 26:16 blue 163:13 board 22:15 110:22 120:5,18,20 body 55:8 56:7,16 56:23 74:19 96:1 bold 88:19 89:3,7 91:5 93:6 bomb 164:3 books 78:15 Borges 132:17 153:20 154:3 155:23 born 47:11 bottle 50:11 bottom 53:4 81:19 87:7 88:13 92:21 98:12 108:10 Boulder 61:8 box 2:5 110:6 142:6 boy 150:18 Brahmins 158:13 brain 159:9 break 7:6 50:16 79:16,22 123:18 151:24 159:16 168:6,9 breaking 152:11 brief 34:17 bring 55:6 66:5 152:1 bringing 152:7,16 161:8 British 114:2 120:20 121:17 122:13 broad 142:15 broadcast 124:19	broader 47:8 167:4 brought 104:24 bubble 163:13,19 bubbles 161:14 Buffalo 36:12 bullet 87:20 116:12 116:17 bullying 140:7,9 143:13,15 144:9 144:11 146:2 147:4,13 151:5,21 bunch 46:8 business 32:11,14 69:15 <hr/> C <hr/> call 24:23 76:4 78:6 83:1 148:18 called 4:20 31:1 39:21 43:9 44:20 46:10 53:6 66:12 97:23 132:10,11 calling 81:7 141:6 143:17 calls 84:17,19 camera 127:9 campus 48:10 49:9 55:6 77:18 80:3 90:11 161:9 canceled 162:16 candidates 64:1 cannon 118:18 cannons 119:1 canonized 119:14 119:17 122:10 Canvas 80:18 86:24 94:2 120:21 capable 146:22 capacity 6:21 7:3 caption 9:24 39:9 40:6 53:6 93:6 95:22 118:9 captioned 9:21 31:11 32:10 50:22 80:7,7 82:5 99:21 108:6	captured 82:2 care 27:3 career 28:15 Carmen 132:16 153:19 154:3 155:23 156:22 Carolyn 146:15,16 case 4:7,8 5:3 10:7 69:16 101:12 160:3 162:6 catching 25:4 caught 135:12 cause 42:13 132:6 139:12 141:13 159:3 165:5 167:14 CC 102:12 CCCC 82:16 84:9 86:11 88:5 91:13 93:8 censure 22:2 central 24:8 58:21 114:3 centrality 101:1 century 20:24 35:21 114:2 120:19,24 121:10 121:13,17 certain 13:7 35:2,4 41:7 61:7 67:9 72:9 78:21 86:17 130:15 141:7,12 147:14 certainly 57:18 76:23 85:13 101:12 107:7 113:12,14,17 114:6 132:1 138:23 145:6 153:15 cetera 23:2 60:5 61:22 66:3 157:15 164:9,9 chain 8:23 9:5 93:12 98:16 101:13	chair 18:7,8,10,14 19:14,17,20 24:1 29:9 63:17 110:1 166:15 chance 59:22 94:9 94:16 97:15 163:2 chancellor 59:20 60:1 chancellor's 15:15 change 40:12 changed 159:2 changing 69:14 channel 43:18 96:13 charactered 113:9 characterization 133:4 characterize 84:18 94:18 113:1 121:3 150:10 156:13 characterized 43:22 49:16 89:12 89:24 112:20 145:14 characterizes 81:7 characterizing 91:14 charge 97:9 chase 163:5 check 163:14 checklist 63:2,5 Chester 111:23 child 27:3 47:11,13 children 149:7 chill 137:24 chose 23:7 144:23 Chris 119:23 circulate 108:13 circulated 72:5 83:1 108:9 circumstances 6:10 72:9 claims 150:5 clarification 7:10 clarify 6:16,20 52:2 58:6 108:19 169:1
---	---	---	---	--

clarifying 31:24	96:1 98:12 100:8	96:13	concert 104:3	20:24
clarity 141:15	100:21 104:19	communicative	concludes 169:24	content 43:22 44:19
Clark 36:22	105:1	88:9	conduct 128:12	55:16 81:7 83:3
class 13:11 30:14	colleague 9:4 111:2	communities	conference 82:7,10	144:24 145:2
34:12 46:6 59:4	colleague's 9:2	114:13	85:18 127:21	context 26:24 73:16
76:1 78:6	colleagues 128:1	community 27:21	conferences 82:14	79:12 112:18
classed 158:14	153:1 164:15	37:7 39:1 55:6,10	confers 78:21	114:14 123:7
classes 30:11 78:19	collected 78:2	95:3 96:8,15 97:1	confidential 126:5	136:16 137:4,23
79:1 89:16	103:23	97:4,22,23 100:5	confirm 120:13	140:13 157:21
classroom 34:7,20	collecting 135:6	104:15,21,23	Confront 157:21	162:22 165:11
44:10 72:8 73:11	collection 142:4	105:2 106:18	confrontation	166:6 168:2
123:24 129:24	collectively 140:21	107:4	154:15	contexts 73:20,22
133:4,7 138:15,22	college 36:10 53:13	comp 85:18	confrontational	continue 147:15
138:24 139:1	63:1 82:7,11	comparable 158:4	129:7 140:10	continued 16:19
141:16 142:5	colloquial 66:18	comparatively	154:7,9	continues 53:10
classrooms 86:2	color 45:5 61:14,16	53:14	confronting 136:19	144:11
157:18,22 158:1,6	65:14 90:23 133:3	compare 141:13	confused 52:15	continuous 60:2
clear 7:12 13:20	133:7	compared 49:13	confusing 17:1,12	continuously 39:23
51:10 76:14 99:4	color-blind 123:24	122:4	congratulations	contract 12:16,17
115:19 141:2	Colorado 61:8	compensated 61:6	47:13 106:13,14	12:18,21,23,24
clearly 44:3 78:16	combat 65:10	competing 65:5	106:17	13:13,19 15:3,4,8
86:16 100:1	come 5:10 9:14	competitive 75:21	conjunction 104:5	16:16 22:23 34:1
115:17 118:1	77:23 79:1 124:14	compiling 30:3	connected 59:13	contribute 89:5
162:8	comes 7:5 33:21	complaint 152:14	Connecticut 2:6	contribution 116:4
client 7:23 8:6	95:6 160:4	153:1,21	70:7,20	118:8 120:4,8
45:13 110:11	coming 97:10	complete 148:12	connection 119:6	contributions 142:3
124:2 160:7	comment 52:17	completed 63:3	152:24 153:21	convention 67:19
clip 132:24 139:24	143:14	complexity 114:12	consecutive 108:22	conventions 66:17
151:7,19,21	comments 161:11	114:13 122:14	consent 169:11	66:18 67:21 68:9
157:11	commerce 69:11	component 65:16	consenting 97:8	68:12 69:7 72:12
clips 3:20 126:17	75:20 89:23	composed 60:13	consider 36:1 44:9	73:5,12,18
132:21 148:6	commission 126:21	composition 11:15	44:11 45:1,7	conversation 44:4
156:9	commitment 57:13	12:2 43:15 69:19	62:22 78:7,19	45:20 56:14 86:16
clock 159:10	committee 49:20,21	82:7,11,15	79:3,7 91:23 92:3	102:7,11 103:16
close 64:11 77:4	50:1,5,22 51:3,4	compound 81:13	123:6	127:12 128:23
87:6 151:10	52:3,8 59:19 63:4	compounded	considered 33:13	130:4,6 148:10
clout 97:11	63:15,17,20,24	115:22	44:14 75:14	151:8 169:21
co-led 124:6	132:11	concentrate 118:3	consist 63:5	conversations
co-opt 142:13	committee's 53:1	concept 24:20	consistently 28:10	101:21 128:3,6
cobblers 121:24	committees 57:9	34:18 72:3 77:3	28:21,24	143:18
code 84:23 128:12	61:6	concepts 34:22 77:5	constructed 89:1	convey 35:16
codified 89:6	communicate 72:11	conceptually 30:24	consult 7:4,5	conveys 83:18
cognitive 35:5	90:5,7	concern 23:8 25:6	consultation 8:4	convo 164:1
Cohen 41:10,15	communication	137:9,9 152:10	consulted 8:14	coordinating 33:5
42:18 43:1 93:19	82:8,11 89:23	concerning 7:3,16	contacted 156:7	coordination 23:24
93:22 94:19 95:20	communications	concerns 154:24	contemporary	coordinator 18:7

20:7,11 23:14,19 23:21,22 24:1 76:22 93:2 104:18 124:8 125:14 141:9 153:16 coordinators 148:17 155:8 copy 5:9 47:17 92:19 108:11 155:15 corner 39:17 correct 10:8 13:13 21:7 22:20 31:21 32:8,11 33:22 40:10,11 45:2,3,6 45:17 48:2 57:20 57:21 59:20 60:21 61:22 62:8 66:11 67:12 68:1 71:11 71:22 79:2 86:7 87:5,10,23 88:21 90:1 93:6,10 94:3 95:7,22 96:8,18 98:24 100:15 101:3 102:13,16 105:21 106:15,16 108:21 109:18,20 109:21 111:21 112:3,4,9 113:22 114:1,22 115:6,9 115:21 116:9,12 119:22 122:5 124:10,12,23 125:1,22 126:24 133:4 142:20 143:17 148:14,15 149:10,11,17 150:24 155:19 156:2,11 157:10 157:19 159:8 160:20 162:1 164:5,10,11 166:19,21,22 167:19 correctly 16:9 34:9 41:15 45:21 51:1	51:23 53:17 60:6 61:9 63:8 89:9 101:7 105:20 111:14 114:16 164:4 correspondence 122:9 counsel 4:12 92:6 92:19 108:9 133:17 155:15 count 25:11 28:2 countries 79:14 country 41:1 counts 21:21 28:7 county 78:5 couple 15:14 19:24 73:7 127:19 132:21 168:14 couplets 121:12 122:3 course 24:16 30:15 30:18,20 42:15 44:9,16 49:11 55:16 61:7 62:6 75:17 97:14 120:20 128:18 138:2 161:14 165:20 courses 11:13,19,20 11:21 17:6,8,20 19:3 21:2 23:22 23:23 25:18,19,21 26:7 30:13 31:4 33:5,5 61:22 111:19 court 1:1,22 4:3,9 4:17,18 6:12 65:2 82:10 92:15 109:11 120:16,17 133:20 cover 108:14 covered 7:23 Covid 19:21 20:1 38:19 115:22 125:2 159:9 create 97:4 119:5	139:12 created 137:24 creating 6:12 27:20 112:17 creative 22:1 111:18 credence 165:21 crickets 136:3 148:2 criteria 129:19 critical 34:7,18,20 34:21,22,24 35:1 35:4,7,20,24 59:10,11,13 116:11 122:18,19 122:22 123:2 129:11,14,19 131:15 164:14 critically 123:8 criticism 35:10 149:13 150:13 161:20 162:13,15 criticize 116:21 criticizing 35:2 116:18 critique 35:7,7,8,22 35:23 cross 79:11 cultural 46:13 89:8 119:5 122:1 123:7 culturally 53:10 55:1 58:20 121:23 curated 144:23 curious 123:13 current 63:2 110:1 currently 11:12 19:16 20:9 36:7 37:4 curriculum 55:16 cut 163:5 <hr/> D <hr/> D 3:1 date 1:16 127:4 dated 80:24 92:17 109:18	dates 29:8 31:11 day 100:7 122:5 133:9 153:8 days 98:23 156:9 159:5 De 1:4 4:7,14 5:2 8:24 9:9 30:7 45:13,17 110:11 111:10 124:2 126:18 128:22 132:2 151:12 152:13,24 155:2 160:5,8 162:18 169:11,15,18 deal 22:4 31:4 77:2 dealing 72:5 73:24 115:15 deals 16:21 dean 15:16 16:8,11 16:12 18:9,11,15 debated 73:2 debating 129:21 decades 73:7 decide 26:16 decision 162:6 declares 163:15 164:21 167:1,2 declaring 166:20 167:5 decrease 54:17 dedicated 24:15 55:11 deeming 89:8 defendants 1:9 2:13 4:16 6:19 define 58:1 defines 76:15 definitely 78:13 definition 22:3 definitions 65:5 degrees 36:7 DEI 47:3,18 48:14 49:9 51:20 63:6 63:24 64:4,6 77:18 107:14 139:17	deleting 98:18 deliberately 37:24 41:1 delightful 66:24 demand 82:6 87:9 87:15,19 88:2,7,7 88:15,24 90:19 91:3,5 139:18 demands 76:1 87:21 deny 115:8 denying 148:11 department 16:23 17:16 18:10,17,18 87:3 97:16,21 163:7,16 164:21 166:21 167:3 departmental 16:24 departments 18:21 18:22,24 depending 69:14 depends 26:23 68:15 DEPONENT 1:15 deposed 5:11 deposition 1:13 4:2 4:4,11 5:8 7:17 8:14 9:22 10:5 48:19 159:19 170:1 derived 66:14 describe 24:10,20 37:13 40:21 41:16 66:8 76:8 93:22 109:23 120:8 156:17 described 32:2 41:5 70:6 74:22 77:18 79:9 90:14 122:18 122:22 130:16 design 44:9 designates 67:20 designation 17:8 30:18 desirable 57:5
---	--	--	--	--

details 13:20 developed 14:2 35:21 developing 32:18 34:3 94:22 development 17:24 24:19 55:11 101:6 developments 28:6 develops 34:18 dialect 67:4 difference 12:11 21:9,12 59:4 differences 40:21 different 11:21,22 15:10 17:6 21:21 24:17 30:19 32:7 35:6 37:23 41:21 42:1 46:14 47:8,9 58:24 59:13 60:13 66:17 69:9 73:15 73:24 76:5,5,7 91:23 92:1 110:6 117:22 132:5 137:3,7 142:7,12 142:15 143:3 158:22 differently 12:19 78:17 147:21 difficult 19:22 22:16 65:4 67:18 diminish 112:20,24 direct 38:22 52:11 53:8 131:11 directed 130:1 direction 90:24 151:3 directly 36:17,18 103:5 106:15 107:6 130:20 131:10 137:18 148:13 director 18:2 20:17 29:10 51:20 84:5 85:3 86:19,22 87:1 91:17 94:20 126:4 129:9	137:11 director's 103:13 directors 125:14 129:15 disadvantage 65:13 disadvantaged 79:3 disadvantages 78:22 disagreeing 145:10 disagreements 154:10 disapproval 135:11 145:19 disciplinary 30:19 132:7 discipline 69:1 75:23 140:18 145:20 disclose 7:15 discomfort 145:4 discourse 157:24 discourses 157:17 discovered 100:17 discovery 133:19 discriminated 168:16 discrimination 53:20 discuss 9:17 11:3 102:22 148:23 discussed 7:15 42:11 46:3 63:24 76:16,19,21 85:3 91:23 107:21 111:1 143:16 158:16 161:21 162:9 163:7 166:17 168:22 discusses 164:22 discussing 12:8 32:15 94:1 130:23 133:6 154:23 163:16 discussion 45:24 46:8 77:8,11 85:10 110:22	115:14 116:12 120:5,18,20 126:21 127:3 129:16,16 137:9 138:1,2 154:16 158:4,11 discussions 103:4 118:21 131:9 142:1 143:1 disinclined 148:21 disparaging 138:20 138:20,21 disparity 54:11 dispute 6:17 disputing 10:23 disrespect 145:4 disrupted 169:20 disruptive 169:18 dissented 145:17 distinct 127:15 distinction 11:24 13:10 18:3 67:11 distinctions 112:14 112:14 distinctive 67:8,8 distributed 155:8 District 1:1,2 4:9,9 diverse 53:11,14 55:1,5,12,15 56:10,23,24 58:21 59:14 diversification 57:19 diversified 74:18 diversify 57:23 58:14 diversity 46:23 48:10 49:16,20 50:5,23 54:13,23 55:17 56:15,16 57:14 58:1,2 59:9 63:5 64:10,14 division 15:16 16:9 18:5 dizzy 5:21 document 10:19	15:22 31:11,14 39:13,15 50:10,21 52:18,19,21 57:12 57:16 64:19 80:6 84:18 86:14 108:13 156:2 159:24 documents 7:19,21 8:10 31:15 39:22 39:24 50:5 72:5 92:7,9 155:12 doing 104:8 107:23 141:3 151:1 153:9 doke 162:20 domain 31:4 domains 31:3 dominant 68:16 door 73:6 double-sided 52:13 109:16 doubt 148:9,24 Dove 111:23 Dr 168:12 169:11 169:15,18 draft 3:15 50:3,23 50:24 52:5 53:4 77:18 drafted 106:5 drawing 13:10 Drive 110:18 driving 58:13,14 dropping 23:1 Dryden 121:13 DuBois 111:20 112:8 119:21 due 152:15 duly 4:21 duty 24:8 dynamics 102:23 <hr/> E <hr/> E 3:1,10 e-mail 3:16,19,21 8:23 9:11 52:7 80:12,14 81:23 85:12,13 92:17	93:1,5,12,18 94:10 95:6,16,19 95:22,23 96:1 97:7,19 98:8,10 98:15,16,23 99:13 99:21,23 100:2,21 100:24 101:16 102:9,11,12,15,18 103:7,16,21,24 104:24 105:17 106:4 107:1 108:6 108:15 109:1,18 109:19 110:4,8,15 111:3 155:18,21 e-mails 3:17 47:21 50:7 85:24 92:20 96:4 103:23 105:6 156:21 e.g 61:6 earlier 32:2 42:11 51:8,19 77:19 79:9 89:22 107:16 109:22 122:19,20 144:12 161:1 164:6 168:19 169:1,10 early 121:1,13 163:14 164:12 167:1 Eastern 1:2 4:9 150:8 easy 132:22 Ebonics 83:10,17 83:21 84:1 educate 116:9 education 31:2 43:20 68:15 73:2 educators 55:10 68:17 effect 130:24 137:13 effective 131:20 effort 40:24 efforts 119:4 164:23 eight 83:7 88:3
--	---	--	--	--

<p>either 20:18 29:14 38:1 72:9 78:4 99:16 126:3 electronic 133:20 element 86:14 97:24 elevated 130:17 Ellison 111:22 else's 117:18 embodied 155:7 embodies 122:17 embody 123:1 emerge 112:18 emerges 84:2 121:10 emerging 92:2 emphasis 41:5 59:9 87:23 126:3 employee 6:18 49:1 employees 16:17 57:23 employer 126:8 128:9 151:23 employment 12:9 12:15 14:17,24 16:19 168:15 enacted 89:6 encomium 123:10 encountered 57:18 encourage 116:18 encouraged 73:21 129:11 encouragement 129:18 encouraging 84:11 91:22 116:11 117:7 140:23 endorse 116:18 endorsing 86:10 ends 81:13 engage 81:8 84:12 85:17,21 155:6 engagement 77:5,7 86:12 105:12 english 11:13,14,15 11:17,23 16:14</p>	<p>17:5,7,8 18:7,10 18:12,14,17,18,18 19:11,14,17,20 20:17,18 24:1 25:18 29:5,9 30:11 33:6 34:19 36:8,10,11 66:6 66:12,17,18,20 67:2,4,12,16,18 68:4,7,8,11,13,16 68:17 69:3,10,20 70:11 71:7,16,23 72:12,17,21,23 73:22 74:2,6,8 75:1,4,6 76:4 87:3 88:8,10 89:2,13 89:22 90:2,13,21 91:14 94:23 96:15 96:23 97:16,21 110:1,3 112:3,6,9 112:16 113:19 114:5 121:4,5,8,9 138:16 139:9 142:21 163:15 164:21 166:16,21 167:3 enjoy 79:11 enjoying 79:8 enjoys 119:14 enslaved 121:1 123:9 ensure 73:20 entail 12:15 entails 72:17 entering 72:8 entire 13:12 88:19 99:6 103:8 124:11 140:18 entirely 9:5 21:14 115:17 132:22 entitled 7:16 8:13 62:8 entrance 126:7 equity 46:23 48:10 49:16,20 50:5,23 63:5 64:14</p>	<p>equivalent 13:3,11 42:16 era 125:3 eroded 22:15 especially 149:12 152:10 ESQUIRE 2:4,10 establish 96:20 109:12 established 153:20 et 1:8 4:8 23:2 60:5 61:22 66:3 157:15 164:9,9 ethnic 74:19 115:6 150:6 ethnically 53:10 55:1 58:20 ethnicity 60:4 Europe 150:8 evaluates 16:18 evaluating 29:15 64:1 evaluation 16:17 28:5 evaluations 21:14 29:17 event 25:5 27:23 events 17:20 24:21 27:22 32:15 40:22 115:18 116:1 Eventually 152:19 evidence 140:16 evince 117:18 Ewing 2:9 4:15 exactly 43:19 50:2 132:11 145:6 159:10 examine 52:18 examined 4:22 104:24 117:9 142:2 examining 118:12 137:10 example 112:11 120:3 examples 137:19</p>	<p>138:18 140:20 Excellence 104:10 105:18 106:20 exception 7:7 67:1 exchanged 8:16 exclamation 88:10 excludes 117:24 exclusively 123:5 excuse 31:22 34:14 38:6,17 41:21 43:21 58:5 60:19 90:20 105:20 133:24 160:23 161:19 163:21 exercise 23:15 exhibit 3:24 5:5,7 9:15,18 15:24 31:5,8,10 39:5,6,8 46:19 50:10,18,20 77:19 80:5,9 85:24 92:4,5,12 92:16 93:10 94:19 100:22 105:6,13 105:15,17 106:13 108:2,2,3,5,8 116:5 126:13,14 126:16 133:1 137:10 142:2,3 146:10 155:11,14 155:16 159:21,24 exhibits 3:24 133:19 exist 115:9 117:4 existed 64:19 exists 18:4 115:5 expect 139:16 expected 26:13 experience 38:11 38:22 40:12 45:14 49:12 54:7 57:22 73:9 77:22,24 78:2,17 83:17 90:6 115:11 122:15 experiences 46:6 expertise 22:14</p>	<p>69:10 76:6 explain 7:14 11:18 14:6,21 17:11,13 21:9,19 36:5 46:2 65:2 72:1 82:10 explained 14:11 109:22 explicit 136:24,24 137:1 explicitly 41:1 127:17 128:12 exploration 142:8 explore 114:11 expose 119:8 exposed 114:5 express 102:21 expressed 137:12 expression 60:4 153:6 expressions 153:10 expressly 164:13 extent 44:5 46:12 67:7 70:2 113:23 121:4 extraordinarily 121:21 extremely 77:23 eyewitness 130:12</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F-R-I-E-D-E-R 16:4 facial 153:6,10 fact 55:3 57:11 59:12 70:16,19 71:22 116:17 121:20 131:19 156:5 162:10 167:5,13 factors 123:11 facts 8:3 faculty 25:8,15,17 30:1,4 35:5 42:8 44:7 49:23 53:15 54:8,17,21 55:2,5 55:7 56:1,6,24</p>
---	---	---	--	---

57:20 58:15 61:5 62:6,15,16 80:21 124:12 125:18,21 166:15 168:17 169:4 failure 9:3 fair 30:22 71:24 84:18 86:4 91:13 94:18 116:2,22 122:17 161:24 162:3 163:13 fairly 127:17 129:1 fairy 46:8 fall 39:8 40:4,15,18 41:7 49:18 63:23 familiar 13:1 39:15 49:1 54:14 66:19 83:3 104:11 113:7 114:23 familiarity 72:4,22 75:4 family 125:9 famous 100:20 far 29:24 30:3 45:1 127:20 156:18 Farrell 1:22 4:3 Farrellreporting... 1:24 fashion 122:4 fast 53:5 160:10 faulty 120:12 favorable 33:17 fear 145:17 February 162:23 165:9 feeds 57:15 feel 7:5,9 8:7 11:3 22:19 28:23 52:10 58:23 59:4 69:14 121:9 128:2,7,10 128:18 129:21 136:16 145:2,10 145:15 152:1 154:16 165:17 167:13 168:22 feeling 5:21	feelings 165:23,24 feels 164:1 fell 44:11 felt 127:7 130:19 144:24 145:16 148:19 164:6,13 168:16 fields 142:13 figure 48:6 file 64:20 123:21 133:2 filed 4:8 Filipino 74:5 film 87:18 finally 55:17 financial 78:14 find 47:23 49:15 86:2 99:13 101:4 103:8 108:24 128:14 129:3 134:6 137:22 163:20,23 165:4 165:13 166:6 167:18,23 fine 17:12 137:3 finish 155:10 firm 106:6 first 4:21 5:7 6:4 9:24 12:9 26:15 36:19 38:15 50:21 51:12 53:9,13 55:4 57:18 72:15 75:14 78:4 80:6 80:14 84:15 92:23 99:10,11 105:19 106:12 108:14,19 109:9 136:4 147:17 148:3,11 152:12 155:15 157:9,11,13 first-generation 74:5,24 five 12:9,14 47:15 61:3 62:1 flipped 153:15 Floor 1:18 2:11 4:6	flow 169:20 Floyd 40:23 115:23 focus 30:21 46:15 101:22 114:3 117:21,22 118:3 focused 21:13 32:7 33:7 49:15 focusing 101:1 118:1 follow 137:1 follow-up 19:12 28:8 136:8 followed 92:8 following 4:2 follows 4:22 foolish 115:8 forbid 38:2 68:23 forced 74:7 foregrounds 65:23 Forget 71:2 forgot 36:5 form 14:18 15:1 22:6,11,21 23:9 26:17,22 29:12 33:23 35:22 37:15 39:3 44:22 45:9 51:22 53:22 54:2 56:3,18 58:3 60:8 60:24 61:17,23 62:9 63:3 65:15 69:12,21 70:18 71:18 74:9 75:8 79:4,8 84:6,10 85:15 86:5 87:11 91:20 95:1,9 96:24 113:3 117:11 124:20 133:20 134:24 135:21 138:9 139:20 141:4 143:20 144:2 147:19 148:5 150:1 152:3 154:20 164:16 formalities 121:6 forms 24:2 89:23	117:4 136:15 164:10 formulated 50:1 forth 67:2 84:16 forward 53:5 59:15 144:5 145:22 146:8 150:16 160:10 162:18 found 129:4 140:8 four 13:8 47:16 106:3 fragile 149:13 fragility 149:23 150:13 frame 48:9 114:19 Frankfort 35:20 36:3 free 7:5,9 8:7 11:3 freedom 22:5,9 23:7 fresh 159:3,6 Friday 95:24 Friederike 15:16,17 16:2 23:13 29:20 30:2 131:21 friendship 165:20 front 15:23 fruition 104:7 frustrated 131:13 frustration 9:2 full 149:2 full-time 13:6,6,11 41:19,20 42:7,16 42:17 60:1 169:3 function 12:1 17:19 funds 97:4 further 159:11 169:23 fuzzy 83:5 <hr/> G <hr/> G 51:6 gained 65:5 gender 60:4 genders 58:22 general 13:21 25:21	31:2 37:22 39:14 42:7,21,23 54:9 54:16 57:6,12 65:1,7 66:10 69:16 75:17 86:15 98:5 123:10 142:22 150:24 152:4 155:1 163:17 169:20 generally 46:20 49:2 56:9,23 107:14 140:14,15 generation 53:13 genuine 154:13 164:1 George 40:23 115:23 122:8 German 35:21 gesticulating 128:22 130:10 146:5 147:9 153:5 154:1 gesticulation 151:12 gestures 151:12 getting 35:12 52:5 52:7 133:23 136:7 give 39:22 47:5 72:22 73:13 76:4 109:10 126:16 142:16 162:21 165:21 given 5:9 35:17 77:17 121:20 122:9 gives 21:24 giving 29:7 glad 47:24 127:23 Gmail 80:7 102:17 go 5:3 25:13,20 26:8,13 27:5,11 27:12 28:1,1,20 28:23 29:2,2 36:16,19 47:18 50:13 51:15,16 63:10 78:12 79:18
--	---	---	--	---

79:20 85:8 92:21 92:24 93:13,18 96:5 98:9,22 109:11 112:11 123:16 126:19 133:15 137:4 155:11 159:14 162:12 goal 55:24 73:11 90:14,17 goals 60:2 God 68:23 goes 16:15 106:11 going 28:2 52:8,11 80:5 96:16 101:14 132:24 151:24 162:2,14 170:1 gonna 5:7 6:4 7:14 12:5 15:13 19:12 27:11,12 31:5 39:5,20 40:1 43:18 50:9,10 53:8 63:19 70:6 73:17 79:17,17 81:18 82:2 92:5,5 92:15 96:5 105:13 108:2,7,12,12 114:12 117:19 126:11,12,16 150:16 151:7 160:5 168:4 good 21:17 54:12 73:23 79:19 122:11 130:7 150:17 162:11 168:12,13 Google 110:18 government 154:19 grab 50:11 Grace 32:21,24 62:19 98:23 104:8 104:18 124:7,8 125:15 126:4 127:17 130:1,20 135:12,20 136:22 140:12 141:9	144:15,22 148:13 149:2,15 grading 163:6,10 graduate 36:13 43:17 75:23 grammar 67:8 69:19 grammatical 67:23 69:6 grant 104:4,13,19 granting 105:24 grants 22:17 gray 131:18 154:13 great 22:4 71:9 72:3 77:20 78:24 93:15 95:7,13,18 119:2,18 grew 70:16,19 ground 5:4 42:14 group 80:22 84:16 91:13 99:8,19 130:2,6,21 136:17 144:14 grown 149:3 guaranteed 13:8 guess 23:13 28:8 37:21 56:7 57:24 84:15 99:22 117:3 135:7,7 147:24 guys 99:3 <hr/> H <hr/> H 3:10 habits 66:15 67:20 habitually 73:22 hand 148:18 161:12 handle 149:13 handouts 47:21 hands 153:6,10 happened 153:18 harassing 128:19 140:7 143:13,15 144:9 146:2 147:5 147:13 151:4,21 harassment 152:15 153:2	harassment's 145:5 hard 27:4 68:2 140:3 163:20,23 164:19 165:4,13 166:6 167:14,18 167:23 HARRIS 2:3 hash 88:15 157:9 Hayes 111:23 head 87:3 header 99:24 102:18 heading 59:17 80:15 88:19 92:17 97:7 headline 81:2 heads 18:2 hear 134:1 heard 5:1 44:15 49:19 54:22 70:3 70:5 72:4 118:2 119:13,16,17,23 136:3,9 148:2,12 169:21 Heise 111:13,15,16 111:16 114:9 117:14 118:2 held 20:3 45:23 50:16 79:22 117:6 123:18 159:16 168:9 help 105:22 161:7 heralded 119:2 heritage 149:18 150:5 heroic 121:11 122:3 hesitated 63:14 high 121:17 higher 15:10 73:1 highlight 157:12 highlighted 157:1 highlighting 84:19 157:6,6,9 Hill 2:6 Himes 111:23 hire 55:7 56:6	hired 30:9 42:3 hiring 54:13 57:9 57:14 59:17 60:1 63:3,14 64:10 Hispanic 158:5,5,8 Hispanics 115:2 historical 66:3 historically 38:7 60:2 history 34:17 83:24 hobby 100:3 hoc 49:19 50:5,22 hold 19:19 36:7 160:16 holding 144:15 holds 161:15 home 58:22 124:23 Homer 111:10 homes 124:19 honestly 119:7 164:20 hope 85:24 86:7 hosts 151:13 hour 24:14 158:20 hub 80:20 Huh 103:10 115:3 160:21 161:17 human 35:1,14 humanities 16:11 16:12 30:20 hybrid 30:15 hybridity 73:21 hypothetical 74:22 <hr/> I <hr/> I-K-E 16:4 idea 19:2 21:22,23 22:14 54:4,10,12 54:23 57:19 60:12 65:24 71:1 72:7 76:2,9,14 93:15 95:8,14,18 97:1,7 104:1 107:9 118:24 121:20 129:24 160:19 ideas 24:22 86:17	92:1 116:19 129:21 148:20 155:7 identification 5:5 31:8 39:6 50:18 80:9 92:12 105:15 108:3 126:14 155:16 159:21 identified 51:8 80:16 155:23 identifies 62:20 149:16 identify 53:12,12 55:24 identifying 138:3 identities 58:22 59:14 60:3,11,20 identity 60:4,12,16 72:19 ideological 35:17 ideologies 35:9 ideology 35:7,9 II 118:10 illegal 151:24 illegitimate 131:15 132:1 illness 5:23 imagine 70:9 132:4 immediate 23:12 immediately 18:5 immigrant 74:5,24 impact 26:20 28:14 28:17 implemented 60:23 62:13 63:12,18 implicitly 117:6 imploring 44:7 imply 91:16 131:12 important 37:3 55:7,15,18 56:6 60:15 73:10 85:20 86:1,15 120:24 144:21 impose 73:12 90:14 imposing 65:13 imposition 72:17
---	--	--	--	---

74:4 impression 90:15 141:6,10 improper 137:20 improv 164:2 impugning 109:3 in-person 125:20 inaccurate 160:7 inadvertent 40:7 Inasfar 33:24 incidentally 62:15 88:4 92:6 142:2 inclination 141:7 include 11:15 65:20 included 32:13 34:4 43:13 98:15 103:12 142:6 includes 22:9 81:5 including 34:3 143:22 inclusion 46:23 48:11 49:17,20 50:6,23 63:6 64:14 inclusive 32:18 incorporate 114:24 increase 49:9 54:7 54:21 Indian 158:8,13 Indians 158:14 indicting 44:6 indigenous 61:13 61:16 72:15 individual 6:19,21 7:3 51:7 65:6 103:16 132:14 individually 102:5 individuals 71:5 116:21 129:21 inferior 89:8,13,18 90:16 inflected 107:14 inform 106:17 123:11 information 35:6 inhibited 164:7	initial 93:12 111:3 169:19 initially 64:17 initiated 157:2 initiative 48:11 54:7,16,20 57:23 94:22 97:9,20 98:2 101:1,9,11 102:5 104:3,19 initiatives 48:8 49:8 55:19 80:2 107:10 107:15 injustice 72:14 119:8 Inoue 43:14 47:5 47:24 48:1,1,2 161:1,2,4,5,6,8,21 Inoue's 162:9 inquiry 146:13 inset 83:8,15 inside 114:13 insofar 15:9 68:15 120:2 instance 17:16 18:24 24:20,21 25:20 30:20 57:9 60:14 66:2,16 75:22 79:12 104:16 112:15 115:6 117:5 123:3 123:6 128:11 142:23 144:16 151:2 instances 147:13 Institute 104:20 105:18,24 106:20 institution 58:10 104:9 154:18 institutional 17:14 18:23 64:12 92:7 110:14 155:21 institutionalize 105:3 institutionally 21:20 institutions 53:14	66:3 instruction 73:11 instructor 41:21 72:10 114:4 instructors 17:7 44:8 139:9 157:21 157:23 insulted 138:11 147:1 insulting 138:7 151:12 153:6,9 insurance 70:8,20 integrated 37:14,16 37:19,19,23,24 38:2,7 integrates 38:24 integration 37:22 intellectual 22:1 70:1 intellectuals 149:9 intense 130:18,19 154:7 intensified 129:1 intentionally 35:19 intently 136:21 inter-domain 30:14 30:16 31:2 interact 74:8 75:6 interactions 44:10 interdisciplinary 30:23 31:1 interest 22:10 99:8 99:18 137:12 interested 27:20,21 58:2 99:7,17 106:12 118:16 140:14 interesting 75:13 76:2 129:6 136:18 160:22 interfere 5:15,18 interim 15:15 internal 114:11 123:6 international 33:6 79:13	interpret 123:5 interpreted 56:8 interrupt 7:9,10 10:17 52:12 intersectional 60:3 60:11 intervention 151:8 interview 43:14,24 158:18 interviewed 52:24 132:9 152:24 153:19 interviewer 43:17 interviewing 156:11 introduce 5:7 10:24 39:5 80:5 105:13 126:11 155:11 introduced 9:18 31:10 introducing 151:24 investigating 132:12,13 156:11 investigation 155:11 156:3,18 156:19 investigator 155:24 invite 24:17 162:6 invited 25:14 26:9 47:5 125:19 involved 29:22 100:5 issue 25:16 131:22 139:13 issues 16:21 27:3 41:2 43:20 57:14 101:13 103:5 145:11 148:23 152:16 italicized 157:1 italics 157:3 item 25:7 62:1 129:20 items 25:1 84:15	J 4:15 James 71:11,14 111:22 January 45:23 103:4,20 109:18 160:14,17 Jersey 37:4,5,6 38:3 Jewish 77:13 Jimmy 28:13 51:6,7 job 11:7 13:23 14:12 21:17 22:20 22:24 23:6 26:20 33:12,21 73:18 75:21 jobs 64:9 John 70:1 71:2 join 82:14 85:24 86:7 Jr 4:3 judge 45:4 judged 90:22 judgment 86:10 July 82:8 jump 33:9 87:6 168:7 justice 72:1 80:2 81:2 82:6 83:1 84:8 86:11 93:6 94:21 95:4,7,19 95:22 96:21 97:6 98:3 99:22 103:13 106:19,24 107:5 107:13 129:10 145:12 164:8,8
				K
				Kanzinger 4:3 keep 47:17 64:21 154:10 Kenosha 116:1 kept 126:5 key 72:19 kind 13:5 17:16 21:21 25:6 27:20 29:1 46:22 47:3
				J

48:10 56:22 57:13 57:15 58:24 59:6 64:4 66:1,15 67:16 72:10 83:4 92:1,2 94:22 99:12 117:6 118:3 121:10,18 123:7 127:16,22 129:8 129:22 130:3,10 130:23 131:13,19 131:23 135:10 136:17,21 139:12 140:16,21 142:4 143:3 147:14 149:22 150:12 151:2,24 152:10 153:5,8 156:6 166:13,20 kinds 16:21 31:4,15 35:6 73:15,24 107:11 117:24 128:2 135:1 142:1 152:16 165:6 knew 151:23 152:17 know 7:17 8:13 9:5 9:6 14:6,8,14,16 14:23 16:19 21:15 21:17 22:1,13 23:1 24:6,17 25:3 25:4,7,14,24 26:24 27:1,20 28:18 36:5 48:15 49:4,5 51:13,16 52:8 53:5 54:12 54:22 55:2 56:13 57:3,8,13,16 58:23 60:14,15,23 61:1 62:13,14 63:13,13 64:19 65:22 66:4,18 67:21,23,24 68:17 68:24 69:1,2,3,15 69:24 72:4,14 73:3,5,14,19 75:1 75:16,19,20 76:1	76:23 77:22 78:22 80:15 83:24 84:2 85:11,12,18 86:13 89:11 90:10 91:21 92:2 95:3 98:14 98:21 99:5,16 104:6,22 105:12 105:23 106:12 107:5,21 108:23 109:9 112:13,17 113:9 114:18 115:3 117:14,21 117:23 118:5,24 119:2,4,5,14 121:5,23 123:4,7 123:9 125:10,19 126:8 127:6 128:7 128:11 129:20 130:23 131:22,24 132:4 134:10 135:11 136:14,18 136:21,23,24 137:4,6,24 139:13 139:21 140:15,16 140:19,22 141:11 141:15,23 143:7 144:3,14,18,23 145:4,5,9,9 148:19 149:18,22 150:4 152:10 154:12 157:2 158:4,8,19 159:1 162:5,8,15 165:7 165:19,20,23 166:2 167:5,6,8 169:20 knowledge 5:14 19:19 31:3 40:7 54:18,19,20 62:14 77:10 115:4 118:5 122:1 126:10 128:13 145:8 149:12,14 150:14 150:15 known 28:9 33:3 Korean 149:19,23	L laid 40:9 language 33:6 66:6 66:7 67:4,14,22 68:2 69:11 70:11 71:23 72:15 73:9 73:19 74:7 75:1 75:20 81:15 86:18 88:8 89:1,8,22 112:3,16 137:15 languages 58:23 73:15 75:1 large 64:13 113:2 largely 154:6 larger 18:23 22:13 155:7 165:10 167:16 Larsen 111:22 late 99:4 law 4:21 151:24 152:11 laws 38:1 lawsuit 6:20,24 169:14 lawyer 7:4,5 lead 103:19 164:21 leader 45:24 leaders 18:1 129:15 leading 103:4 129:16 learn 35:14 74:7 79:1 117:5 learned 152:19 learning 72:21 80:19 leave 73:5 lecturer 41:18,20 42:1,6,9,11,19 93:22 lecturers 14:4 lecturing 8:6 led 34:16 48:15 124:5 131:9 163:15 167:1,2 Lee 98:23 Lee-Amuzie 32:22	32:24 98:23 104:18 124:9 125:15 126:4 130:20 135:20 141:9 148:13 149:2,16 Leela 96:12 left 161:12 163:19 167:12 legal 7:16 8:3 legitimate 86:15 137:22,23 let's 38:11 44:20 46:21 66:5 74:15 79:18 85:23 92:4 100:24 101:16 108:1 127:1 129:15 132:21 133:22 134:11 136:1,1 139:24 143:7,8 144:5 146:8 162:18 168:6 letter 3:18 82:19 106:14 letters 87:8 88:24 91:5 122:13 level 18:23 97:2 120:19 131:23,24 levels 11:21 47:9 68:17 leverage 73:10 Library 36:22 license 22:1 lie 165:16,19 life 35:3 121:1 Likewise 30:11 Lila 19:18 20:8,22 23:14,18 26:24 27:7,8,9,10 29:8 41:10 51:6 96:12 97:8,9 103:22 124:6 127:17 129:20 130:1 131:21 135:12 136:22 140:12	144:15,22 Lila's 101:3 162:9 Liliana 76:22 80:8 81:22 82:24 85:4 93:2 94:20 99:2 101:18 104:18 107:1 116:4 124:8 125:14 126:4 129:9 130:20 131:9 135:19 137:11 141:9 143:22 145:11 148:13 149:2 150:4 limit 125:15 limitations 13:8 limits 128:18 line 21:8,13 33:2 56:5 94:2,6 99:10 102:13 106:12 107:21 110:2,9 111:13,17 131:20 136:24 157:16 169:19 lineage 119:6 lines 21:10 linguist 83:21 linguistic 72:1 80:2 81:2 82:6 83:1 84:8,24 85:1 86:10 89:7,17 91:15 93:6 94:21 95:4,7,19,22 96:21 97:6 98:2 99:22 103:13 106:19,24 107:5 107:13 112:18 119:8 145:11 164:8,8 linguistics 129:10 145:13 link 52:9 81:5,6 linked 59:12 Lisa 27:8 list 52:7 54:24 58:21
--	---	--	---	--

listed 76:24	116:12 123:4	20:17 109:20	71:2	126:12,13,19,20
listen 126:17	143:8	118:7 163:14	mean 9:8 10:16	127:6,8,21 130:13
133:22 134:11	looked 48:7	164:20,22 166:14	11:18 13:7,15	131:2,17 132:3
136:1 139:24	looking 41:9 88:16	166:18,24 167:2,4	22:22 27:11 30:16	133:3,5,8,11,14
141:2 151:7	103:23 105:4	mark 31:5 50:10	34:21,23 37:16,18	134:22 139:7
listened 147:2	132:15 136:23,23	67:24 92:5,15	38:9 45:4 47:10	141:22 142:21
listening 150:18	141:15 152:12	108:2 113:7,13	47:19 51:10 52:12	143:2 145:18,23
lists 45:23	looks 34:6 88:23	114:5 133:24	54:3 56:5,8,9,22	148:22,23 152:8,9
listserv 26:10 80:15	98:8,20 106:6,8	marked 5:5 31:8	57:1 58:19 60:11	152:16,17 153:22
litany 145:13	110:22 111:9	39:6 40:2 50:18	60:17 75:14 76:2	154:10,24 155:3
literacy 73:10	156:5 160:3	50:20 80:9 83:7	79:10 85:17 86:12	156:6,8,22 157:14
literally 84:22	loop 64:11 77:4	92:12 105:15	100:4 103:18	163:14,16,20
87:19	87:6 151:10	108:3,5 126:14	107:22 112:13	164:22,22 165:3
literary 11:22	loosely 49:16	155:13,16 156:16	114:21 117:23	165:11 166:6,13
112:17 114:3	107:13	159:21,24	118:22 120:2	166:21,24 167:1,3
119:1 122:10	lot 31:15 105:12	market 1:18 2:11	121:5,16 123:9	167:4,6,6,7,10,12
literate 121:21	107:16 127:11	4:6 75:21	125:18 129:23	169:10,12,15,17
literature 11:22	140:15 168:7	marking 10:2 39:17	135:7 138:10	169:18
20:21 21:1 111:18	love 100:18	Marxism 35:22	140:21 142:1	meetings 3:13,14
113:24 114:2,11	lower 39:16 158:13	Marxist 35:23 36:1	144:18,22 147:12	17:22 24:9,10,15
120:20 138:14,20		82:18	147:16 148:18	24:16 25:14,20,22
141:7	M	mask 9:2,3	153:13 154:12	26:6,8 27:1 28:1,2
litigation 39:22	M 21:4	master 112:16,17	157:20 158:24	28:6 29:2 32:4,7
little 10:13 17:1	Madame 120:16	113:18	159:2 163:10	40:4,9,14 42:20
21:24 67:23 93:9	magic 100:17	master's 36:10	165:19 167:8,11	49:11,12 51:9
101:20 127:18,18	main 18:24 21:12	masters 71:22	meaning 36:17 67:8	59:7 92:1 101:6
129:7 140:2	mainstream 88:10	112:3	161:21	102:22 103:19
150:18 153:13	90:21 121:8	material 44:16 82:1	means 14:8 65:13	107:19 129:8
live 37:3,4,8,10	major 19:6,9,11	82:2 84:12	98:21 119:6	142:20 154:14,15
38:12,14	36:8 46:7 72:24	materials 47:18	meant 37:21,21	163:21,24 164:7
LLP 2:9	majority 44:8	50:4 76:24 81:9	38:6 46:9 66:6	164:19 165:5
lobbied 82:18	53:15 67:14 68:3	110:6,17,24 115:1	75:18 142:4,16	166:11 167:16,19
located 4:5	68:6,14 115:14	117:2,9,12 129:10	measured 154:11	167:20,21,24
logic 123:6	majors 19:3	132:16 141:8	mediation 132:5	168:20,21,23
long 19:19 24:14	making 94:20 99:7	142:5 168:22	139:13	169:3,4,7
41:4 42:3 73:3	99:17 137:12	Matt 7:18 31:6	medication 5:18	melanin 113:15
74:1 106:11	mandatory 26:14	matter 66:1 127:18	meet 161:23	139:1
116:21 119:1	27:2	130:24	meeting 24:14,20	member 42:21,23
127:5,5 153:12	manifest 114:14	matters 23:8	24:23 25:1 31:11	49:23 82:16,17,20
154:10 158:18	Manifesting 138:24	154:23 165:6	32:1,10,18 34:6	146:18 166:16
165:20	manifesto 87:10	Matthew 1:15 2:10	34:16 39:8 40:18	168:17
longer 12:15,17	manifests 81:15	3:5 4:11,15,20 5:8	41:9 42:22 43:23	members 24:2,18
13:18 14:12	86:18	6:7	45:19 46:3,16	25:8,15,17 45:16
look 57:8 84:14	marginalized 60:2	max 25:22	60:1 85:11 108:6	51:4,4 63:4 74:1
85:23 88:1,22	Marika 80:8	Maya 71:21	123:23 124:5,6,11	125:9,21
92:4 101:2 109:15	Marissa 19:16	McWhorter 70:1	125:8,17,20 126:1	meme 111:11

memories 19:21	145:22 146:8,10	133:6	need 55:11 57:2	norms 89:8 129:8
memory 5:19	150:16 151:8,10	mythological 122:1	140:17	notably 60:3
105:22 106:1,6	151:15		negative 28:17	Notary 1:20
107:24 120:12	misinformed 19:1	<hr/> N <hr/>	neighbor 38:7	note 10:18
153:8 159:2 161:7	mission 50:2	N 3:1 21:4	neighborhood	notice 3:12 6:2
167:9	mistaken 92:23	name 4:2,13 5:1	37:10,13,20 38:2	10:23 48:18
Mengel 1:20 4:18	mode 74:3	15:15,17 16:5	38:12,22	notions 21:21
mental 5:23	model 121:10	37:7 47:6,24 77:3	neighbors 37:11	November 34:11,16
mention 54:11	models 76:5	90:10 106:2 110:8	125:9	number 25:13,22
99:17 161:19,19	modified 103:4	110:21 117:15	neither 47:10	31:7 39:17 45:19
mentioned 21:4	modify 104:1	132:14 146:17	Nella 111:22	54:21 57:2 59:16
35:19 55:1 72:13	modules 46:22	named 32:21 49:2	never 28:4 50:4	59:20,24 61:3,3
75:19 110:21	moment 102:24	names 4:12	51:14 68:1,20	62:1 63:1,10
127:23 129:20	116:13 121:2	national 149:18	70:10 71:13 82:17	78:24 88:17 90:19
157:14	127:15,21	150:5	118:2 119:11	91:2,8 92:8,9
mentions 26:24	money 106:7 162:7	naturally 35:22	122:9 125:13	100:14 109:9
163:12	monitor 125:5	nature 10:14 11:10	128:10 145:16	132:4 142:6
message 8:15,16,19	monitoring 125:7	12:18,21 17:24	164:6	157:10 160:11
8:20 9:7,8,11 94:1	monthly 169:6	27:3 35:18 44:16	new 12:24 14:1	162:19
94:18 161:12,24	morning 101:20	53:1 54:15 65:23	15:7 21:5 30:18	numbers 23:1 31:6
163:12	156:6	77:18 80:16 92:20	33:14,14 36:12,13	39:21,23 40:1
messages 3:22 8:17	Morrison 111:24	98:19 107:12	37:4,5 38:3 40:13	54:11 56:9 100:18
80:21 160:1,2,7	112:15,20,24	125:9 156:23	69:4 73:18 89:24	numeral 88:15
160:13 161:16	113:12 114:7	162:8	92:2	
163:3 166:13	119:14	navigate 132:22	new-ish 30:18	<hr/> O <hr/>
met 7:18 71:5	mother 72:14	Naydan 19:18 20:8	news 15:12	object 6:9 44:19
Michael 2:4 4:13	motivation 46:5	23:15,19 27:10	nice 47:17	84:3
6:16 10:16 88:12	motives 135:14	29:8 41:10 51:6	Nicosia 19:16	objected 95:10
95:15,23	move 38:15,16	76:22 80:8 81:22	109:20,21 111:2	objecting 45:14
middle 38:17,19	162:18	82:24 85:4 93:2	166:18	objection 14:18
42:14 78:6 139:7	moved 38:17,21	94:20 99:2 101:18	Nicosia's 20:18	15:1 22:6,11,21
midway 101:17	100:10	104:18 107:1	118:7	23:9 26:17,22
Mike 5:1	movement 73:8	124:8 125:15	nine 120:5	29:12 33:23 37:15
mind 54:15 61:24	84:8 86:11 93:8	126:4 130:20	non-adjunct 169:3	39:3 44:22 45:9
69:3 79:15 132:8	140:19	131:9 135:19	non-tenure 42:7	51:22 53:22 54:2
145:16 153:11	movements 115:12	137:11 141:9	non-tenured 21:10	56:3,18 58:3,16
159:7,13	multi-racial 38:22	143:22 145:11	non-white 76:10	60:8,24 61:17,23
mine 100:13	multiple 8:17 9:6	148:13 149:2	nonresponse	62:9 65:15 69:12
minor 19:7 36:9	9:12 24:22 25:1	150:4	148:12	69:21 70:18 71:18
minorities 53:12	38:24 75:1	Naydan's 20:22	nonspecific 54:9	74:9 75:8 79:4
55:24 115:6	multiracial 38:12	116:4 129:10	nontenure 21:8	84:6,10 85:15
minority 56:2	multitude 60:13	nebulous 59:6	noon 101:21	86:5 87:11 91:20
minutes 127:19	mumbled 135:2	necessarily 36:4	norm 88:9 130:3,21	95:1,9,11,14 96:4
133:1,22 134:10	murder 40:23	65:17,24 97:7	131:8 154:13	96:24 113:3
134:10,15 136:2	115:22	necessary 11:2	normally 24:13	117:11 124:20
140:1 143:9 144:5	myth 123:24 133:3	128:2	141:24	134:24 135:21

138:9 139:20 141:4 143:20 144:2 147:19 148:5 150:1 152:3 154:20 164:16 objectionable 136:16 objections 6:3,14 6:15 10:18 45:18 obligated 7:7 152:1 obligation 6:11 21:15,16 28:23 29:1 obliged 156:24 observations 148:10 obvious 6:10 46:8 obviously 6:19 8:1 73:20 82:22 106:3 127:5 133:18 142:14 161:19 163:11 occasion 70:7 127:6 132:8 occupies 42:13 occurred 127:20 October 123:23 128:23 129:16 133:2 156:6 169:9 offensive 129:3,4 130:10 offer 107:18 offered 47:8 office 48:13,15 139:17,18,21 152:14 official 12:5 94:23 96:14,22 97:16,21 97:24 oftentimes 24:21 117:6 oh 9:23 10:3 31:22 37:21 40:8 49:23 50:7,13 71:17 74:14,14,16 83:14 87:13 88:16 94:13	125:1,10 135:12 okay 6:9 8:15,19 9:14,23 16:12 17:4 18:12,21 19:4 20:6 29:14 33:9 41:9 42:18 43:5 52:2 53:3,7 59:21 62:4 63:11 69:5 70:9 74:16 84:1 88:1 91:7,12 93:14 94:1,15 96:11 100:23 102:18 105:11 107:8 108:16 109:7 116:4,16,24 118:15 126:11 128:17,20 133:21 137:5 159:11 160:12,16,21 163:1 168:4,6 Okey 162:20 old 160:2 once 21:16 one's 60:12 ones 47:22 59:5 166:6 ongoing 50:1 55:11 online 70:4 96:17 opening 33:11 opinion 9:2 opportunity 9:17 opposed 74:3 130:2 137:1 140:20 opposing 133:17 order 109:4 organization 82:13 organize 17:20,23 24:8 134:21 organized 32:16 131:16 156:5,8 organizers 131:2 organizing 24:21 27:22 orientation 35:21 57:6 60:5 65:9 orientations 58:22	origin 149:18 150:5 original 99:13 100:2 originally 107:1 156:7 origins 74:19 outcomes 24:16 75:17 outside 97:3 125:18 overview 34:17 <hr/> P <hr/> P 82:19 p.m 93:3,19 95:24 99:3 P.O 2:5 Pack 28:13 51:6,7 page 3:3 9:24 39:17 50:22 53:4,6 59:15 61:4 80:6 81:19 83:13 85:24 87:6 88:2,13,14 92:8,22 100:20 101:17 106:9,13 108:10,19 109:9 110:21 116:5,5 118:8,8 155:15,19 156:16 160:10,15 162:18 pages 162:22 paid 13:11 42:14 62:6 paper 44:20 68:1 69:8 155:12 paragraph 53:9 55:4 56:4 81:13 83:8,15 88:23 94:13 101:2 114:10 118:17 paragraphs 117:23 parenthetical 114:12 parse 122:1 part 17:10 25:16 27:23 29:3,15 35:23 37:5 44:12	51:5,18 52:24 60:16 64:18 72:19 80:22 81:13 82:14 94:22 97:21 101:5 103:14 106:4 121:1,13 122:14 128:5 133:19 137:13 142:19 159:19 participant 43:6 participants 106:3 130:5 participate 42:19 42:21 46:10,14 49:8 52:3 80:1 105:8 124:18 participating 104:17 111:7 148:9 156:19 participation 45:20 46:7,11 103:20 126:19 127:13 156:3 particular 35:17 46:15 57:2 59:1 72:11 74:3 91:24 121:16 122:15 127:17 128:4 129:24 155:3 166:1 particularly 75:15 102:11 103:2 167:10,17 party 6:24 80:17 pass 168:4 passcode 126:6 pay 61:20 PDF 52:9 118:8 peculiar 32:16 pedagogical 73:8 110:7 115:12 pedagogy 34:19 81:15 108:7 111:1 137:13 142:4 163:12 peddling 145:18	peers 116:9 Penn 4:7 11:9,10 12:2,22 14:2 17:14 18:23 22:19 26:21 28:15,20 30:7 31:3 36:9,16 36:23 41:16 44:15 46:18 48:9 49:2,2 51:20 54:6 55:23 56:14 57:12,19,20 57:23 58:1,7,10 58:13 64:8,11,13 64:17 75:12 76:12 76:14,16 77:9,17 78:18 80:8 89:11 90:11 91:18 98:15 104:10 109:24 114:18 115:1,13 119:24 123:14 126:9 127:3 138:13,17 152:14 152:15,21 153:1 154:17 167:24 168:15,20 Pennsauken 37:9 Pennsylvania 1:2,7 1:19 2:12 4:6,10 154:19 people 22:19 25:22 27:2 37:22 43:21 44:21 45:8 46:7 46:15 61:14,16,21 62:7 67:21 68:10 74:21 76:10 82:14 89:23 96:16 111:6 114:21 115:2,4,16 117:7,10,19 121:12,24 122:4 124:23 125:16,18 127:3 128:15 129:11 131:16 135:2 138:4,14,22 140:23 142:16 143:17 148:9 168:23 people's 119:4
--	--	---	---	---

124:19 134:22 144:15 165:21 percent 53:11,12,15 53:16 55:24 56:1 performance 29:23 Performances 118:9 period 46:21 periodically 21:3 25:18 51:11 52:7 periods 11:23 perpetrated 114:21 115:16 person 16:15 29:2 85:19 109:19 123:9 161:15 personal 29:1 66:1 148:20 personally 128:14 personnel 64:20 perspectives 55:5 55:12,16 56:10 81:10 pertinent 75:24 perversely 100:18 Ph.D 36:11 69:11 70:11 Philadelphia 1:19 2:12 4:6 36:21 Phillis 110:22 120:5 120:23 142:10 philosophical 35:21 philosophy 34:19 phone 161:15 phrase 66:7,19 87:19 phraseological 69:7 piece 157:21 164:1 Piero 1:4 4:7,14 5:2 8:24 9:9 30:7 45:13,17 92:8 110:12 111:10 124:2 126:18 128:22 132:2 151:13 152:13 155:2 160:8	162:19 169:11,15 Piero's 153:1 160:5 169:18 pinnacle 118:18 119:24 pipe 163:20,23 164:19 165:6,13 166:6 167:14,18 167:23 placate 165:18 placating 166:3 place 1:18 6:14 66:24 120:21 162:7 plaintiff 1:5 2:7 4:14 5:2 8:13 111:10 Plaintiff's 5:8 plan 104:2 planning 103:18 plans 32:4 platform 80:19 play 29:15 123:11 132:21,24 133:15 133:24 played 156:18 157:11 plays 119:4 134:2 134:13 136:5 140:4 143:11 144:7 145:24 146:11 150:20 151:17 playwright 119:3 please 4:12,18 14:9 15:18,24 17:13 48:17 50:14 52:17 56:21 62:3 94:14 101:3 107:14 116:15 118:14 pleasure 106:17 PLLC 2:3 poem 121:3 123:5 123:11 poet 121:1 poetry 120:23	121:4,6,17 point 20:5 35:17 87:12,20 88:10 90:24 116:17 133:13 145:7 162:6 166:15 169:17 pointed 95:15 pointing 10:1 87:18 98:10 points 73:1 116:12 130:15 policies 89:6 policy 152:1 political 102:23 121:2 politician 73:24 politics 45:20 46:11 Pope 121:13 popular 121:12 popularity 65:6 population 53:11 portion 54:17 157:1 pose 150:24 position 13:12 14:21 16:13 19:20 21:6 30:7,10 33:10,15,18,18,19 41:16,19,20 49:5 65:9 109:24 123:14 128:7 140:22 146:20 positive 26:20 28:14 149:21 possible 42:5 45:2 125:11 147:20 post 20:3 48:23 120:19 post-doc 36:22 potential 33:21 potentially 145:4 151:23 power 66:4 practice 57:14 95:3 96:8,16 97:2,5,23 104:15,23 105:2	106:18 157:18 practices 54:13 63:6 66:3,15 89:17 110:7 157:24 163:6,10 preceding 166:23 precise 56:8 precisely 15:5 20:20 22:16 153:22 164:18 predominantly 67:4 predominately 77:23 preface 123:22 preparation 8:14 prepare 7:17 prepositions 67:24 presence 49:9 128:24 present 4:10 102:24 130:14 146:17 167:4 preserve 6:14 preserved 58:18 96:5 pressing 25:6 presumably 12:15 13:18 15:6,8,9 101:14 102:9 165:12 presume 14:11,24 75:3 159:20 pretty 62:21 146:22 156:13 159:2 162:5 prevent 5:24 90:21 previous 93:9 146:4 160:15 162:23 previously 150:23 primarily 22:22 25:17 33:4 35:15 46:5 77:16 115:16 115:17 primary 12:1 23:22 25:7	printed 108:10,14 printout 83:7 prior 44:13 48:14 163:12 169:14 prioritize 76:1 private 102:15 privilege 8:7,11 76:8 77:2,6,8,11 77:13,15 78:16 79:9,11 89:7 118:18 119:15,24 145:12 157:22,23 158:5 164:9 privileged 8:3,4 78:7,20 privileges 76:10 78:22 79:14 privy 125:8 probably 6:2 26:23 40:6 50:1 58:20 59:4,13 75:24 108:11 120:2 122:4,11 146:3 159:3 167:21 problem 43:10,22 44:3,17,21 45:8 45:14 46:7,16 104:2 136:18,19 138:5,14 141:12 problematic 75:15 problems 78:14 process 63:2,4,7 81:9 procured 47:22 produced 39:24 133:18 155:13 producing 39:21 production 92:7 98:16 103:24 109:2,4 160:5 professional 17:23 24:19 28:5 82:13 101:6 114:4 134:21 139:9,16 154:11 professor 11:13
---	--	--	---	---

12:8,10,12,12,20 13:1,4,16,19 14:7 15:20 20:20,23,23 21:5 22:5 23:4,18 26:12,16 28:9,19 30:10 31:18,20,23 33:2,10,16,19 41:24 42:1,9,12 43:14 58:2 67:15 75:10 80:1 89:11 90:10 92:18 96:7 110:2 111:17 123:22 139:16 146:21 155:13 159:20 professors 24:6 25:9 26:1 114:18 158:5 proficiency 71:9 program 17:5,6,13 17:15,19,22 18:4 18:6,8,9,10,12,14 18:18,18,20 19:14 19:17,20 20:7,11 20:14,16,17 23:14 23:19 24:9,10,17 24:18,23 25:1,10 25:16,20 26:2,6,8 29:4,9,10 31:11 32:1 33:3 34:15 39:8 40:4,14,14 40:18 41:19 42:19 42:23 43:2,3,12 43:23 45:16 46:3 49:11,12 51:5,8 62:15,21 76:21 80:8 84:5,5 85:3 85:11 86:19,22,22 87:4 91:17,19 92:1 93:1,2 94:20 94:24 96:15,23 97:24 99:7,18 100:3,5 101:2,6 102:22 103:12 104:18 105:3 106:24 107:3,15	107:19 108:6 110:2 123:23 124:8,12 125:14 125:14,17 126:3 129:9 131:9,17 133:3 134:22 135:9,10 137:11 137:12,18 141:8 141:17,22 142:19 142:21 143:2 145:18 146:18 148:16 151:13 153:15 155:8 165:5 166:10 167:7,12 168:20 168:21 169:3,7,10 program's 58:8 programming 101:12 programs 17:3,7,10 18:1 19:2 47:8 55:12 66:10 106:11 107:11 145:17 project 96:23 104:5 123:1 projects 22:2 prominent 120:24 promote 80:2 85:17 117:10 promoted 12:7 14:7 15:7,13 42:9 64:3 77:5,7 84:4 promoting 85:13 86:4,10,12 91:18 91:22 promotion 33:13 promotions 13:22 prompt 123:1 prompts 32:19 34:4 pronounced 16:5 47:24 61:11 96:13 pronunciation 48:5 proper 139:5 167:22 proportion 54:8	proposal 106:5 proscribed 43:23 prose 68:21,24 71:14 prospects 26:21 protected 8:11 protests 40:24 protocol 137:1 proud 74:18 proudly 163:15 164:20 166:20,24 167:2 provide 24:19 64:10 133:18,19 140:20 provided 34:17 52:10 132:16 providing 19:3 28:5 59:19 92:18 155:15 provocative 44:3 PSU 92:5,9,14 100:20 101:17 105:20 110:15 PSU-De 92:7 public 1:20 69:24 154:17,24 publicly 88:4 164:15 publish 149:10 pulled 22:15 punished 139:18 152:7 punishment 152:12 purchase 75:24 purchasing 78:15 purpose 52:19 pursue 22:1 purveyed 76:12 90:18 put 12:18 28:4 37:18 41:10 50:24 74:15 78:17 96:16 125:5 127:13 131:1 137:18 140:22 141:8	putting 130:24 <hr/> Q <hr/> Quaker 2:6 qualifications 10:15 11:7 queer 60:15,20 question 5:10 6:12 7:8,9,11,11 14:10 14:20 17:17 19:12 22:13 23:15 28:8 58:1 62:4 65:4 74:2 75:13 80:11 82:22,23 90:8 120:15,16,17 128:16,17,20 130:22 131:16 134:4,11,17 135:13,14 136:4 136:11,13,17,20 137:3,18,22 139:6 139:19 140:1 143:9 144:10,13 145:1 146:2,6 147:17 148:3,11 148:19 151:5 157:13 159:23 167:7 questioning 4:23 129:2 131:20 144:12 156:23 169:19 questions 53:3 65:2 128:15 129:12,14 129:19 130:7,7 134:22 147:15 150:22,24 159:11 168:14 169:2,23 quick 50:12 168:14 quirks 67:23 quite 42:13 140:3 140:10 quota 54:14 quote 81:8 83:1 94:23 96:14,22 117:17 119:24	135:3 157:9 quoted 98:11,21 <hr/> R <hr/> race 38:2 43:20 44:9,9,11 54:18 60:3 61:21,22 74:19 79:7 101:22 103:5 128:3 143:18 150:5 races 38:24 racial 58:20 79:11 114:13 129:10 152:15 153:2 racially 53:10 55:1 racism 41:2,13 65:11,13,17,21,24 70:17 84:24 91:15 103:5 114:14,20 114:21 115:1,5,11 115:15 117:6,17 117:18,19,24 118:1,4 129:24 135:13 140:24 158:8,13 racist 45:2,8,15 66:4 69:20 141:7 157:17,24 168:23 Ralph 111:22 ran 24:20 166:16 random 125:9 range 29:8 rank 18:16 20:19 26:12 rarely 163:24 Rationale 53:6 re-notice 5:8 9:21 re-reading 135:3 reach 26:11 reached 159:19 reaching 20:11 read 32:22 34:9 41:15 44:20 45:21 50:24 52:10,23 53:17 55:8,13,20 56:5 59:21,22
---	---	--	--	---

60:5 61:9,24 63:8 63:10 69:4 70:4 71:11 74:17 82:8 82:24 83:4,19 89:9 91:9,10,11 94:9,13,16 96:10 99:9,11 100:24 101:7,23 103:10 105:20 111:13,20 114:16 116:14 117:2 118:6,13 120:9,15,17 121:19 122:9 135:8 140:11 160:21 164:3 reading 52:20 56:19 81:3 93:9 123:8 127:18 131:5,6,10 135:9 135:16 138:3 140:12 144:17 156:20 161:24 readings 135:15 139:8 real 50:11 83:18 realize 113:21 154:17 really 14:2 27:23 37:1 43:24 49:11 51:17 86:9 101:23 115:3 118:16 119:6 142:13 144:20 145:21 146:7 160:3 164:17 reason 18:6 23:1 31:1 37:2 46:10 51:16 63:13,14 98:14,15 108:8,13 108:17 140:8 153:14 160:6 reasons 46:8,13 135:2 recall 8:20 31:14 45:18 59:9 63:18 64:2 98:18 104:12	104:14 105:4 106:23 123:22 125:7 127:24 128:22,24 129:1 130:5,9 132:13 134:4 146:17 148:7 151:11,14 153:7,19 163:10 recap 130:9 receive 15:12 received 15:6,7 36:6 80:11 99:6 162:4,14,17 receptive 161:23 recipient 99:5 recipients 9:12 recognize 9:15,18 51:4 55:4 110:4 110:17 146:14 159:24 160:3 recollect 127:9 recollection 127:2 recommend 61:5 recommendation 61:20 recommendations 59:17,19 recommended 26:14 63:2 recommending 59:24 62:5 record 4:1,12 5:8 6:12,14 9:19 10:1 10:17,18,22,24 11:4,8 14:6 15:18 16:1 17:12 21:9 31:6,10 36:6 40:1 41:17 46:2 47:22 48:17 50:14,15,17 58:18 69:8 79:20 79:21,23 91:11 108:5,7 109:3,11 115:20 123:17,19 123:21 132:23 133:10 156:17 159:15,17 168:8	168:10 169:11 170:2 recorded 126:8 169:15 recording 126:11 126:13 133:13,18 records 160:7 recruited 107:2 recurrent 27:4 recurrently 76:20 redirect 11:1 refer 15:22 27:7 39:24 83:22 reference 9:7 41:6 98:7 103:13,14 109:11 166:12,23 referenced 9:11 referred 21:5 51:19 82:12 84:15 98:11 103:16 106:24 167:10 referring 15:24 42:6 48:18 68:13 81:23 83:11 87:13 94:21 95:2 96:21 100:2 102:8 107:1 107:13 117:1 157:20 162:10 164:18,20 167:13 refers 67:3 68:9 96:7 reflect 10:1 55:7 56:7,8,10,15,17 132:24 reflects 57:1 83:17 88:9 133:10 156:3 refresh 105:22 106:1 161:7 refuse 10:10 regard 40:13 45:8 57:22 107:11 regarding 78:22 165:12 regional 78:4 112:14 regular 43:5,6	regularly 27:5 42:19 101:5 169:4 related 107:5,6,12 157:11 relation 161:10 168:15,20 169:9 relationship 16:13 20:18 95:4 relative 79:13 relatively 14:1 21:17 39:10 159:6 release 61:7 releases 62:7 relieve 6:11 61:21 relieved 61:7 religion 58:23 remember 15:5 34:3 39:13 43:15 43:19,24 44:1,2,5 47:6 48:13,23 51:23 52:5,6 59:7 64:16,18 81:3 85:5 97:2 98:4 99:21 101:9,11 102:4,6,7,10 103:15,18,22,22 104:4,9,16,17 105:10 106:2 107:23 118:12,23 124:2 127:11,20 128:4 129:9 130:8 130:11 131:19 137:10,14 146:5,7 147:9,11,24 153:4 153:5,13,24 154:2 154:7 156:20 158:19,24 159:3 165:3 166:8,9 remembered 153:16 remembering 47:4 reminding 127:4 Renaissance 20:20 110:2 renewed 22:24 renews 16:16	renotice 10:5,19 reorient 48:9 repeat 62:4 120:15 repeatedly 76:21 rephrase 14:9 replace 82:19 reply 93:12 report 3:15 50:23 50:24 52:5 53:4 55:23 77:18 140:24 reporter 1:20 4:17 4:18 92:15 109:11 120:16,17 133:20 reporting 1:22 4:3 55:23 represent 6:17,19 6:20 39:20 70:6 82:2 126:12 160:5 160:23,24 representations 114:11 represented 6:4 Representing 2:7 2:13 reprimanded 132:3 reproduce 157:17 158:5 reproducing 157:24 request 24:2 136:13 161:23 162:11,16 169:11 requests 10:19 require 38:2 64:14 required 46:18,21 64:3,6 106:3 requirement 73:4 125:13 128:9 requires 72:21 research 21:16 33:20 36:22 resolving 132:5 139:13 respect 8:22 116:8 123:5 127:12
---	---	--	--	--

139:15 respective 79:14 respects 78:9,13 respond 102:23 120:22 130:2 145:8 147:6 responded 146:13 respondents 9:6 responding 8:21 95:17 96:2 102:19 103:8 146:22 responds 100:8 response 10:5 73:23 75:14 93:19 95:6 99:22 134:12 136:3 146:3 148:14 responsibilities 20:22 24:5 61:8 responsible 19:3 30:3 140:12,18 144:15,24 145:2 resulting 115:17 review 7:19,21 29:17 30:1,4 103:7 162:21 163:2 reviewed 8:1 reviewing 29:22 64:23 81:9 revise 63:2 revised 63:4 revising 24:15 81:9 revolved 101:12 rhetoric 58:24 92:2 128:6 rhetorical 73:13 76:5 112:14 Richard 118:9 Rick 4:2 right 6:24 31:18 32:22 34:7 38:4 49:14 55:8,13,20 56:22 58:21 60:20 61:12,18 65:24 67:1,2,22 68:23	71:6,17,17 72:11 72:16 73:2,16 74:19 75:2,2,18 77:15 79:15 80:24 80:24 81:6,10,16 82:8 83:19 84:5 84:16 85:1,14 86:2,19,24 88:10 88:20 89:3 93:16 93:20 94:12 96:4 96:17,23 97:15,17 98:12 99:19,23 100:9,12 101:23 102:19,24 103:5 103:13,17,20 105:10 106:9,21 107:4 110:5,9,11 110:12 111:20,24 113:7 116:19 117:18 119:11,18 119:21 120:10 122:8,20,24 123:10 126:5,24 127:24 129:12 130:13 131:3,6 133:11 134:19 135:17 136:9,18 138:5,6,6 140:3 141:13,19 142:8 142:11 144:1,20 146:23 147:5,18 149:3,7 150:22 151:1 153:16 155:8 156:6 157:11,18 160:14 161:12,14,18,22 163:16 165:14 166:2,4,12 167:18 right-hand 39:16 Rigilano 1:15 3:5 4:11,20 5:9 58:2,5 80:1 92:18 96:7 110:22 123:23 155:13,14 156:17 159:20 168:12 ring 132:17	rise 132:7 Rita 111:23 role 23:14,21,22 119:4 155:3,4 156:18 roles 29:14 rooted 89:2 roots 150:6 roughly 48:9 148:2 rule 137:1 rules 5:4 69:18 run 39:23 167:5 rung 42:9 running 28:6 rush 52:19 <hr/> S S 3:10 sabbatical 20:4 Sad 106:1 safe 10:4 77:4 110:14 122:3 sake 27:24 salary 13:14 salesman 70:20 salesman's 70:8 salutation 106:15 sanctioned 94:23 96:14,22 139:6 sanctions 139:14 sand 136:24 Saul 2:9 4:15 savvy 132:23 saw 7:22 8:15 51:14 77:19 127:8 140:24 saying 8:24 86:7,13 95:17,23 101:4 121:5 126:22 137:17 141:13 166:8 says 7:22 39:9 53:9 55:3 57:6 61:5 63:1 83:17 84:17 84:22,22 85:6,23 85:24 87:9 88:15	88:22 90:20,20 91:2 93:15 94:5 95:7,13,21 96:11 97:14 98:11,20 99:4,6 101:21 105:1 106:13 128:12 135:8 163:14,19 164:20 165:12 167:1 scale 165:10 167:16 scamper 139:17 scan 160:13 162:22 schedule 17:19 23:22 32:1 scheduled 24:4 101:5 148:22 scheduling 24:7 32:17 scholar 70:10 113:23 160:24 school 21:22,22 35:20 36:3 40:13 49:13 65:10 schools 36:20 123:4 Schreyer 104:9,20 105:18,23 106:20 sciences 18:5,22 30:21 screen 110:18 125:16 screenshot 8:16 script 164:2 search 61:5 63:2,4 63:4,6,20,24 second 25:11 33:6 53:8 55:3,4,10 59:21 74:7 75:1 81:6 84:16,21 90:19 91:10 99:5 101:24 106:9,13 114:10,10 134:10 162:21 seconds 133:1,23 134:11,15 136:2 140:2 143:10 144:6 145:22	146:8,10 148:2 150:17 151:9,11 151:16 section 88:20 97:14 sections 13:8 sector 69:15 security 13:23 14:12 21:18 22:20 23:6 33:21 see 9:24 31:12 32:19 35:16 39:9 39:11,16 41:11 43:10 52:12 53:4 58:24 59:1,4,16 69:7 75:15 80:14 80:20 81:14,19 83:10 85:2 87:7 87:15,16,17 88:14 90:23 91:2 93:3 94:2,7 95:16 96:1 96:12 99:9 100:7 100:21 101:14,17 102:1,12 106:2 110:8,18 112:11 116:6 118:18 120:4 125:10 136:14 143:10 155:18 160:14 162:23 seeing 31:14 39:13 140:15 seeks 65:10 seen 15:9 31:15,16 57:16 72:18 self-avowed 82:18 semester 13:9 24:3 24:12 32:3,5,11 32:13 40:10 49:18 101:23 137:14 semesters 41:3,4 senate 49:21,24 send 24:1 sending 80:20 86:21 93:5 156:24 sense 14:24 15:6 35:4 100:19
---	---	--	--	--

113:13 140:11 143:4 145:3 165:18 sent 8:15 50:7 52:9 80:18 94:2 99:14 99:21 100:2,22 105:17 109:19,19 133:20 sentence 53:9 55:3 61:4 81:6,13 88:23 90:19,20 94:6 96:10 97:13 99:11 102:2 103:2 114:10 118:16 separate 18:17 101:21 sequential 109:2 serious 82:22 serv 52:7 serve 53:10 served 10:7,18 service 4:4 10:10 27:24 28:2,7 61:7 serving 61:5 session 141:19,23 sessions 46:22 47:8 set 64:22 68:9 73:12 159:9 setting 45:12 84:16 seven 26:3 sexism 117:6 sexual 58:22 60:4 Shakespeare 118:17 119:1,9 121:14 142:14 share 50:9 142:11 shared 50:4 short 79:22 168:6 shot 110:18 show 28:6 34:19 48:17 98:11,20 sick 5:21 side 87:13 136:14 136:14 141:13,13 161:12,14 163:19 166:12	sided 100:11 significant 158:20 significantly 22:15 69:2 similar 107:24 simply 78:7 112:20 112:24 138:24 162:4 Simpson 111:11 single 27:12 38:24 90:10 100:11 sir 139:2 sit 103:15 167:9 situation 135:8 six 26:3 47:15 63:1 63:10 sixth 94:6 skill 71:9 skills 35:8,11,14 skin 45:5 65:14 90:23 113:15 139:1 skip 28:9 51:3 59:15 61:4 83:6 84:17 94:5 101:16 106:8 114:12 118:7 144:5 145:22 146:8 150:16 156:16 skipping 51:8 103:2 111:9 slips 129:22 small 39:17 47:11 Smith 2:10 3:8 4:15 4:15 5:9 6:7,9,16 7:18,24 8:8 10:16 10:22 11:2 14:18 15:1 22:6,11,21 23:9 26:17,22 29:12 33:23 37:15 39:3 44:22 45:9 48:20,21 51:18,22 53:22 54:2 56:3 56:18 58:3,6,16 60:8,24 61:17,23 62:9 65:15 69:12	69:21 70:18 71:18 74:9 75:8 79:4,15 79:19 84:6,10 85:15 86:5 87:11 88:12,16 91:20 95:1,9,12,15,23 96:24 100:13,15 108:11,16,19,22 109:7,9 113:3 117:11 124:20 134:24 135:21 138:9 139:20 141:4 143:20 144:2 147:19 148:5 150:1 152:3 154:20 159:13 164:16 168:6,11 169:22 social 30:21 83:18 102:23 119:5 123:6 socially 83:18 89:1 society 117:4 sociological 46:13 sole 120:3 solely 90:22 solidifies 121:11 somewhat 130:16 136:2 sooner 6:2 sorry 34:23 62:22 68:5 78:12 88:16 133:23 140:2 150:17 161:3,8 sort 12:13 13:22 15:2,4 16:18 18:4 18:15 21:13 22:14 24:8,16 25:7 27:1 27:20 30:15 32:17 37:21 42:7 44:7 46:11 47:3 50:1 54:11 64:9 65:4,9 65:22,23 66:9,16 69:6 72:14,15 73:1,3 76:15 78:4 78:5 80:19,20	93:8 96:22 97:9 97:11,23 100:6 104:4 107:14 110:5 112:17 118:24 121:15 127:7 128:24 129:8 130:2,3 131:21 133:15 135:10,11,12,14 136:19 137:9 140:11,18 145:1,3 147:12 148:19 149:16,23 157:1 163:6 165:21 169:19 sought 55:2 sound 147:1 sounds 116:11 150:23 Southern 37:6 Spanish 74:6 speak 17:17 67:20 68:3,7,10 70:3,5 71:7 72:6 73:19 79:13 85:20 145:16 speaker 47:7 speakers 49:10 66:16 speaking 38:7 70:7 70:16,20 138:15 164:7,14 speaks 74:6 special 99:8,18 149:14 specific 9:7 16:22 29:7 35:9 37:2 59:7 98:6 131:13 139:8 144:13 specifically 11:20 25:15 39:14 47:4 48:12 50:3 54:22 57:2 105:2 130:1 136:21 139:7 156:23 specifics 83:5	speculate 43:19 spell 15:17 spelled 16:4 spend 52:20 splash 164:3 spoken 67:4,14,22 68:2 sponsor 104:15 sponsored 47:4 spot 131:1 spring 39:9 40:4 41:8 45:19 square 83:12 staff 51:19 53:15 54:1 55:5,7 56:1,7 57:20 stage 63:6 stamp 80:6 81:20 92:6 105:19 108:9 108:14 134:10 136:1 144:5 146:9 160:4,11 stamped 39:23 50:21 92:14 105:14 108:8 155:14 stamps 92:10 108:18 stand 61:12,15 150:13 stand-in 42:7 standard 63:3 66:11,12,14 67:12 67:18 68:3,7,8,10 68:13,16 69:2,9 69:20 71:7,15 72:12,17,21 73:22 74:2 76:4 88:8 89:2,21 90:2,13 91:14 112:5,8 113:18 121:3,4,9 121:18 standing 119:1 stands 61:13 97:15 start 32:10,13 36:23 92:21
---	---	--	---	---

started 150:18	104:8,19 105:1	subject 85:10 94:2	suppression 72:18	Tagalog 74:6
starting 14:2 40:15	stereotypes 45:5	97:7 99:24 145:19	supremacy 66:7	take 7:6 15:22
40:16 51:12	65:13 66:2	submission 106:18	70:24 71:15 81:14	59:21 79:16 97:9
starts 33:15 83:10	stipulate 13:13	submit 110:6	85:1 86:17 89:2	100:4 116:13
93:1 99:9 101:18	stood 153:11	submitted 30:1	138:4 145:12	141:21 159:13
118:9 132:24	stop 84:21,23 88:7	111:10 152:13	164:9	168:6
state 1:7 4:7,12	strange 39:10	subpoena 9:20 10:7	sure 8:5 9:14 11:19	taken 4:4 48:23
11:7,9,11 12:2,22	strategies 142:12	10:10	14:22 21:12 23:10	162:7 169:6
14:2 17:14 18:24	142:15	subscribe 141:11	23:20 31:16 34:24	takes 120:21
21:23,23 22:19	Street 1:18 2:11 4:6	subscribes 86:16	38:10 40:24 42:3	talk 10:13 11:6
26:21 28:15,20	stress 59:1	subsequent 13:22	46:4 50:2,7 52:16	24:18 25:3,6 47:5
30:7 31:3 36:9,9	strict 73:4	40:23	54:12 55:18 57:1	117:19 143:7
36:11,16,23 41:16	strike 14:10 23:15	substance 24:14	57:4 62:5 63:11	144:14 148:21
44:15 46:18 48:9	34:14 82:23 90:7	34:12,15 43:12	64:21 68:10 71:8	talked 27:23 30:6
49:2,2 51:20 54:6	string 97:19 99:6	44:4 46:4 158:22	71:11 74:16,16,17	89:22 138:14
55:23 56:15 57:12	107:2 161:12	succeeded 133:23	74:21 76:14 78:1	161:1 168:19
57:19,20,23 58:1	strive 56:24	success 73:20 86:2	82:20 85:17 86:19	169:10
58:7,11,13 64:8	structure 16:24	97:10	88:13 91:2 92:11	talking 8:22 20:1
64:11,13,17 75:12	29:4	sued 6:23	93:11 94:14 95:11	34:24 35:1,8,9
76:13,15,16 77:9	struggled 78:15	suffers 149:22	97:5 98:6 99:13	83:13 94:19 95:18
77:17 78:18 80:8	student 43:17 46:6	150:12	109:17 115:3	102:4 103:9
89:12 90:11 91:18	55:8 56:7,16,23	suggest 14:16 57:17	119:6 128:11	115:19,20 116:24
104:10 108:7	70:11 72:16,22	60:17	132:11 133:10	117:3,17 118:23
109:24 114:18	73:13 74:10,18,22	suggested 137:7	144:22 146:21	125:22 129:22
115:1,13 119:24	113:24	suggesting 62:11	152:9 156:20	133:11 155:2
123:14 126:9	students 23:2 29:18	111:19 120:12	158:19 159:2	160:18,24 161:8
127:3 138:13,17	33:5,6 46:10,13	168:3	161:22 163:9,21	163:5 164:2
152:14,15,21	53:11,13 55:5,24	suggests 16:19	164:17,19 165:22	165:24 166:10
153:1 154:17,18	69:18 72:8,18	21:13	166:5	talks 47:2,18,19
168:1,16,20	75:19,20 76:4	sum 106:9	surprised 166:10	taught 17:7 30:13
State's 98:15	77:20,23 78:3,14	summary 157:2	sustained 55:19	30:14 32:21 74:3
stated 164:13	78:18 79:1,8,10	summer 40:22	swear 4:18	75:5 89:15,21
statement 64:4,7,10	79:13 81:14 84:23	115:18,20	swift 156:13	90:2,6,11
64:15 82:5 90:18	84:24 86:1 89:15	SUNY 36:13	swinging 156:10	teach 11:13,17,20
143:8	90:15,21 111:19	superlative 112:3	switch 76:7 84:23	12:1 13:8 16:13
States 1:1 4:9 69:11	117:5 119:9	122:4	sworn 4:21	16:22 21:2,15
75:7 128:3	120:22	supervisor 16:16	syllabi 118:6	24:3 25:17,18,21
static 55:18	students' 73:9	23:12	synthesize 35:6	26:7 30:20 55:15
statistics 53:20 78:1	studies 66:9 75:23	supervisor's 152:2	Syracuse 36:10	68:17 74:15 76:3
status 13:6,7	114:3,4	support 106:19	system 31:2	84:23 90:13
step 12:14	study 84:3	supportive 162:9	systemic 65:23	122:19 137:7
Stephen 41:10,15	style 121:8,17	supposed 56:15,16	70:17	142:12,14 153:7
42:18 43:1 93:19	stylistic 121:6	137:8,19 141:21		teacher 12:8 23:17
93:22 94:19 95:19	subcommittee	157:23		69:10 107:11
95:24 97:8 98:12	100:6	supposition 145:1		133:2
99:14 100:2,8,21	subheading 82:7	suppress 72:14		teachers 27:21

43:10,21 44:3,6 44:17 45:14 84:21 84:22 85:6 88:7 106:19 teaches 20:24 33:4 111:18 teaching 11:12 12:10,12,12,20,23 13:16,19 14:5,7 21:7,13,14 23:18 24:6 25:9 26:1,12 26:15 28:9 29:17 30:10,11 31:20,22 33:2,3,10 35:13 41:24 42:1,6,8,8 44:12 66:6 69:18 72:17 78:18 81:9 84:23 91:14 96:17 102:22 104:10 105:18 106:20 115:1 122:18 136:15 137:6 138:4,15 141:12 146:21 tech 132:23 technically 6:17 techniques 142:5 142:16 tell 5:15 7:6,24 23:20 37:3 52:18 133:14 146:13 147:3 154:5 163:2 telling 130:6 tendency 65:8 tension 73:1 tenure 21:6,11,15 21:17,21,24 22:14 22:17,20 33:2,10 33:18 110:2 111:17 123:13 tenured 20:20 21:4 22:5 23:4 25:9 term 13:1,19 35:13 72:4,13 83:22 terms 14:8,17,23 15:10 35:2 47:7	54:10,24 55:12 56:8 57:8 64:1 78:15 89:1 102:10 150:24 152:4 Terrance 111:23 terrible 23:16 testified 4:22 52:21 158:21,23 164:6 testify 10:5 126:22 148:1 testifying 5:24 testimony 5:15 86:9 98:1 109:23 text 3:22 8:15,16,17 8:19,20 9:7,8 88:22 91:24 98:11 98:21 107:21 133:6 155:7 157:3 160:1,2,7,13 161:12 texts 76:3 144:16 144:23 Thad 2:4 4:13 thank 6:2 7:14 10:13 16:8 19:12 20:1,16 31:24 39:4 46:19 49:19 50:20 61:20 64:22 88:17 90:13 114:9 150:16 151:15 theater 164:1 theme 72:6 133:8 theoretical 137:2 theory 35:20 65:23 72:12 140:19 thes 107:14 thing 18:19 30:2 59:7 65:18 75:3 85:12 97:17 104:7 104:21,23 127:7 152:12 things 7:22 17:6,24 27:3,22 32:17 40:12 48:7 49:15 52:8 60:15,17 65:20 67:24 73:2	92:3 100:10 111:6 115:8 127:16 138:3 140:16 142:1 151:2 162:7 165:13 167:24 think 9:1,5 13:20 14:3 18:4,20 19:1 20:19 21:20,22 22:3,12,13 24:8 24:12 26:10,23 27:19 28:4,5,7 30:24 31:1 32:23 33:4,14 35:4,12 37:2 40:22 41:1,7 46:4,5,9,12 48:12 48:20 50:3 51:10 51:23 54:9,10 56:5 57:5,12 58:19 59:1,6,11 61:11,18 62:19,21 64:22 65:5,7,12 65:16 66:8,9,23 68:1,16 70:5 72:7 72:12,24 73:3,7 74:2 75:16 76:2 78:21 79:18 84:14 85:19,20 86:12,13 86:14 87:17 89:24 91:21,22,24 93:15 95:2,13,17 97:6 97:15 98:4,5 100:11 101:3 104:14 106:2,2,5 109:8,12 110:8 112:2,7 113:4 115:16 116:5 117:7 118:23,24 119:20 120:23 122:14 123:7 124:6 127:7,17 128:5,16,17,20 129:5,19,23 130:16 131:11,12 131:18,18 132:6,9 132:12 133:6,7,13 133:16 135:1,2,6	136:13 137:2,10 137:21,22 138:7 139:4,6,10,11 140:8,9,17 141:14 141:23 142:11 143:5,15 144:11 145:5 146:3,15 147:8,12 148:19 150:6 151:2,4 152:6,17 153:4,10 154:6,12,13 155:1 156:7 157:13 158:21 161:21,22 162:5,8,9,10,10 162:11,16 165:7 166:2 167:19 168:14 169:19,20 169:22 thinking 34:7,18,20 34:21,22,24 35:2 35:5,7,24 38:6 44:2 122:19,22 131:19 thinks 85:20 86:15 third 55:15 88:23 90:20 97:13 101:2 102:2 110:21 116:17 Thomas 111:13,16 114:9 117:14 118:2 thorny 81:8 thought 65:10 110:6 123:4 127:5 130:6,15 135:8 137:23 139:5,14 141:3,10 144:21 168:7 thoughts 135:6 165:23,24 thread 100:8 102:19 103:8,17 144:12 three 15:3 24:12,13 32:3,4 34:7 40:9 41:9 43:23 59:16	59:20,24 60:17 87:20 88:3 118:9 156:9 159:5 162:22 Thursday 4:4 time 1:17 4:5 6:3,3 6:9,9,13,13 7:6,8 8:7 12:8 30:6,9 31:7,14,17 33:1 34:4 38:21 39:24 39:24 41:18 46:21 47:20 48:8 49:1,6 49:24 50:2 52:17 52:18,20,22,23 55:19 57:18 61:6 62:6 69:16 70:22 72:5 73:3 79:19 81:3 82:24 87:1 91:1 92:23 101:10 108:14 114:19 115:13,15 119:24 124:19,24 127:5 128:1 134:10,18 136:1 144:5 146:6 146:9 147:10,17 152:17 153:12 155:5 163:7 169:11,17 170:1 timeline 48:13,24 times 24:12 27:2 32:3 59:11 69:4 73:18 90:1 142:24 title 12:6 21:13 31:21 44:2 93:11 133:8 titled 133:3 144:17 144:19,20 157:21 today 5:16 6:5 10:4 22:17 57:16 86:9 98:1 103:15 158:23 167:9 today's 4:7 7:17 toddlers 149:5 told 15:5 27:7,10 72:10 137:6 tolerate 138:13,16
--	---	---	--	--

138:18 139:2 tone 129:1 130:16 131:12 134:6 135:10 140:6 147:5 154:3,11 tongue 72:15 Toni 111:23 112:15 112:20,24 113:12 114:7 119:14 tools 73:10,15 top 83:6 92:21 155:18 160:15 topic 32:10 41:2 66:5 76:7 103:3 103:17 163:17 169:21 topics 22:10 32:7 35:17 164:15 total 25:8 totally 69:15 166:5 tough 68:4 148:18 town 37:7 toxic 135:19 track 13:22 14:1,5 21:5,6,7,16 33:10 33:18 42:5,6 123:14 127:22 tradition 35:23 122:13 traditional 22:2 traditionally 22:12 69:13,19 traditions 83:18 training 10:14 36:6 46:22 55:12 107:11 133:2 135:9 141:19,23 143:6 transcript 3:24 159:1 transition 49:14 translate 57:11 transpired 156:21 treated 90:22 tri-state 78:5 triad 58:19	trial 6:13,15 tried 34:19 114:24 148:12 true 18:12 23:4 96:3 135:17,18 143:16 144:22 164:18 167:16 truth 135:19 truthful 5:15 truthfully 5:24 truths 83:19 try 79:17 133:15 163:22 trying 20:19 35:16 46:12 57:17,24 64:16 140:11 155:6 tuition 78:15 tumultuous 115:20 turmoil 121:2 turn 81:18 92:22 turned 127:16 turning 151:3 Twain 113:7,13,23 114:5 two 17:6,10 24:12 24:13 25:19 30:19 32:2,18 47:7 51:12 60:15 83:7 87:20 88:17 90:19 91:2,8 98:22 117:23 125:13 139:8 type 39:17 typical 32:1,17 64:9 132:1 typically 13:5 47:19 54:23 66:16 67:19 90:4 165:6 typo 39:10 40:7 101:4 167:19 <hr/> U <hr/> U.S 44:8 68:3 UCLA 36:22 Uh 14:15 110:5	Uh-huh 13:24 16:7 16:20 17:2,9,18 17:21 19:8 29:6 34:10 46:1 57:7 57:10 59:3 63:16 66:13 74:20 81:11 81:17 82:4 83:9 87:22 89:4 94:8 98:13 107:20 110:13 111:12 114:15 124:17 125:4 127:10 129:13 149:20 150:9 163:18 Ukraine 150:7 um 7:20 8:18,20 11:12,19 13:21 15:19 16:11,15,24 17:10 18:3 19:5 19:21 20:3,8,19 21:14 22:12 23:20 23:24 24:7,13 25:4 26:3 27:5,5 31:15 32:15 33:1 33:2,20 35:4,11 36:8,15 38:16 39:14 40:22 42:3 42:21 43:13 45:10 46:4 47:9,19 48:12 49:23 51:10 51:17 52:6,10 53:23 54:3,9,10 56:7 58:17,23 59:4,5 60:12 62:19,20 63:23 64:2,8,17 65:1,7 65:10 66:10 69:2 69:13 70:4 71:1 72:3 76:9,23 79:10 82:12 85:16 86:23 95:2 97:5 101:11 102:9 103:18 107:4,16 107:22 110:1 111:17 115:14 116:13 118:23	120:18,20 121:9 124:6 125:17 126:20 128:4,16 129:1,21 131:14 131:19 135:1 139:10 140:12,20 141:23 142:11 143:4 144:11 146:21 150:6 152:9,23 153:12 154:12 156:22 162:4,15 164:17 165:19 169:19 unacceptable 136:15 unclear 95:17 uncomfortable 127:19,23 128:2,8 128:10,15,18,21 129:5 139:11 143:17,24 145:6 145:10,15 164:14 underlying 8:3 138:3 underscored 91:6 understand 6:23 7:9 8:12 14:21 17:13 23:7 33:17 37:19 40:3 44:12 56:14,22 60:10 62:5 65:3,10 68:5 73:14 76:8 90:4 92:8 96:19 98:2 109:7 117:1,8 123:8 158:3 167:22 understanding 12:18 13:21 15:3 21:23 22:4 23:5 38:5 53:19 54:6 55:22 58:10 65:8 68:8 72:7,20 73:4 understood 7:11 12:21 76:12 82:20 97:20 117:2 118:22	unfairly 90:22 unfamiliar 31:16 unit 17:14 United 1:1 4:9 69:11 75:7 128:3 universal 34:21,23 35:13 universities 64:13 university 1:7 4:7 6:18,18 12:2 28:3 36:9,11,11 48:9 61:8 66:10 97:3,3 university-wide 57:13 unpopular 162:3 unprivileged 78:23 unprofessional 128:14 129:14 134:7 136:11 137:17 140:6,9 143:13 148:16 unsettling 154:14 unusual 137:24 unwittingly 157:15 157:17,24 updates 52:7 uploaded 111:7 upper 120:19 URL 81:20 use 17:23 48:5 67:22 73:15 142:17 usual 133:7 usually 26:24 54:23 61:11 67:3,19 69:3 utility 75:18 utterance 128:5 uttered 156:10 <hr/> V <hr/> vaguely 81:4 83:4 110:5 118:13 valuable 27:19 34:20 varies 21:20 69:1
---	--	---	---	---

variety 36:3 76:3 77:20	W	147:14 149:1	66:7,16,17 70:14	135:1,22 138:10
various 48:7 107:17 117:4 136:20 164:10	W 49:3,6	153:6 164:14	70:24 71:15 76:8	139:21 144:3
vary 24:13,15	wage 15:10	169:12	76:9 77:2,5,15,20	147:20 148:6
vast 68:6,14	wait 38:16	ways 58:24 62:7	77:23 78:3,8,13	150:2 152:4
venue 152:9	walking 125:11	67:23 78:23 132:5	78:18,21 79:8	154:21 164:17
venues 91:23	wanna 10:13,17	136:20	81:14 84:24 86:17	168:4
verbatim 9:1	96:10 108:1	we'll 24:17 25:3,4,6	87:8 88:9,24 89:2	woman 51:19 60:15
vernacular 66:21	122:19 143:24	48:5 81:5 93:13	89:2,7,7 90:15,21	60:18
83:23 113:22	145:22	99:5 109:8,11,12	114:14 115:11,16	women 149:3
version 77:2	wans 81:12	133:14 142:23	117:10,17,19	won 106:7
Vicki 1:20 4:17	want 7:4 11:1,6	168:14	118:1,18 119:2,23	wondered 48:5
victim 70:17,21,24	14:20 22:10 27:24	we're 4:1 6:12 12:8	119:24 122:4	word 8:20,21 30:22
71:14	33:20 37:1 46:20	50:17 75:18 79:23	138:4,4,4,8	141:24
video 43:13 48:18	52:15,20 58:14	115:19,20 117:19	145:12,12 149:16	words 32:2 67:9
VIDEOGRAPH...	73:19 75:19,20	123:19 125:22	150:10,12 157:21	137:13 154:7,18
4:1,17,23 50:15	77:22 101:4,4,22	126:16 129:22	157:21,22,23	165:14
50:17 79:21,23	109:10 121:7	133:11 136:19	164:8,9 168:16,23	work 11:8,10 36:16
123:17,19 159:15	126:17 133:10	137:6 159:17	whiteness 89:5	36:19 53:1 70:4
159:17 168:8,10	134:9 137:4	168:10 170:1	119:4	73:17 81:8 86:1
169:24	155:10,11 160:10	we've 48:17 107:12	whopping 106:9	94:23 99:3,7,7,8
videotaped 1:13 4:2	wanted 5:3 51:3	117:9 133:20	wide 76:3	99:17,18,18 100:3
4:11 169:24	57:15 65:1 74:13	159:19 162:8	Widely 76:19	107:10 142:13
view 35:17 58:7,7,8	99:16 120:13	weak 9:3	wielded 66:4	161:20 162:9
67:15 69:10	131:13,23 159:23	wealthy 77:24	wild 151:12	worked 149:1
137:20 145:7	169:1	79:10	wildly 146:5 147:9	working 96:20
viewpoints 59:10	wants 74:10 96:19	wearing 9:3	window 14:12	124:23
59:12,13	96:21 100:1,4	WEB 111:20 112:8	windows 148:6	works 57:5 139:22
vis-a-vie 24:6	105:1 137:21	119:21	Wisconsin 116:1	workshop 166:16
visible 125:16	warning 162:2	website 82:3 83:7	withstanding 139:5	workshops 107:17
visual 128:24	Washington 122:8	87:7 88:5	witness 3:3 4:11,19	142:23
visuals 146:7	123:10	week 120:5	4:20 10:1 15:2	world 82:15
147:11 153:7	wasn't 49:23 63:17	weeks 15:14	22:7,12,22 23:10	worst 145:20
159:3	104:2 132:1,1	weird 99:12 167:13	26:18,23 33:24	worthy 152:12
vocabulary 67:9	141:2 143:5 151:1	went 47:2 107:18	37:16 44:23 45:10	wouldn't 32:4
vocal 167:17	155:2 158:4,11	117:14	50:11 51:23 53:23	47:20 97:19
voice 136:17 146:14	water 50:11	weren't 13:11	54:3 56:4,19	121:18 125:19
147:5 154:10	way 37:18 66:2,3,4	47:21 140:23	58:17,19 61:1,18	129:4 140:9
voices 112:17	66:8 68:16 69:9	west 43:16	61:24 62:10 65:16	141:24 152:1
voicing 9:2 162:13	70:16,19 72:11	Whatever's 79:19	69:13,22 70:19	165:16,16,19
volumes 122:10	74:15 86:17 90:5	whatnot 11:1	71:19 74:10 79:5	wow 161:18,19
vs 4:7	90:7 101:5 106:11	Wheatley 110:22	84:11 85:16 87:12	wrapping 168:15
vs- 1:6	121:16 122:16	120:6,24 142:10	87:18 91:21 95:2	writ 64:13 113:2
	125:6 130:10	white 43:9,21,21	95:15 97:1 100:14	write 64:4,6,16
	131:1 135:7 137:5	44:3,6,7 45:14	105:9 109:13	66:12 78:20 103:3
	137:7 139:13	46:15 53:15 54:1	113:4 117:12	writer 119:18 122:7
	140:11 141:12	54:8 62:16,19,23	120:16,18 124:21	writes 29:24 122:3

writing 11:13,14,20 11:20,23 12:1 15:20 16:14 17:5 17:15,22 18:4,6 19:6,7,9 20:7,14 20:18 21:2 23:17 23:18,19 24:1,8 24:10 25:10,16,19 25:20,21 26:1,6 28:19 29:5,9,10 30:12,13 31:11,18 31:20,23 32:1,19 33:5,19 34:3,7,15 34:20 39:8 40:4 40:14,18 41:13,19 41:21,22 42:19,23 43:2,2,14,23 44:8 44:13 45:16 46:3 51:5,8 58:7 62:15 62:21 66:5,9 67:15,19,21 68:9 68:12,18 69:10 72:8 73:10,11 75:10 76:22 78:19 79:1 80:8 81:15 82:14 84:5 86:22 89:11 91:18,24 93:2 99:7,17 100:3,5 101:2,6 102:19,21 104:4 104:16 105:3 106:18 107:15,18 111:18 112:5 114:5 121:2,11,16 121:16 122:12 123:10 125:17,21 131:9,16 134:21 137:12 139:9,16 141:17,22 142:19 142:24 143:2 145:18 146:18 160:24 165:5 166:10 167:7,12 168:19,21 169:2,6 169:9 written 71:15 86:18	121:7 wrong 16:10 19:1 38:18 61:14 85:9 101:3 147:15 154:9 wrote 103:7 112:8 113:21 120:10 122:15 157:3 <hr/> X X 3:1,10 <hr/> Y yeah 13:13 14:10 14:13 17:15,16 18:15 19:10 20:3 24:13,24 25:12 26:5 27:5,14 30:5 30:13,24 31:22 32:6,20 33:11 35:15 36:2 38:20 38:23 39:2 40:17 41:23 42:3,17,24 43:4,8 46:14 47:23 50:1 51:2 55:9,14,21 56:13 58:12,19 59:8,21 59:23 60:7,22 63:9,21 64:24 66:21 67:6,17 68:19,24 70:2,9 71:3,10,12 74:23 75:11 77:21 81:1 83:20 84:11,12,20 87:13 88:3,6 90:3 91:9,10 92:11 94:17 97:22 99:11 100:4 101:14,15 102:3,17 103:10 103:14,20,21 104:1,1 105:5 106:10 109:17 110:5,5,16 115:14 116:3 118:14 120:14 121:15 122:21 124:13,13 125:24 126:2	127:4 128:19 130:14,22,22 132:12,20 133:12 134:5 135:6 141:1 141:18,20 142:12 142:15,15,18,22 146:4,24 147:11 152:4,20 153:13 154:4,21 158:2 159:14 164:17 165:2,8,10,11,15 167:20 year 12:24 13:12 15:4,10 23:24 26:15 29:24 32:1 38:19 40:13 44:13 49:14 50:23,24 51:12 101:23 128:5 year's 41:6 101:12 year-long 36:21 year-to-year 12:23 yearly 16:17 22:23 years 12:9,15 19:24 20:4 22:16 43:6 yelling 151:19 York 36:12,14 69:4 73:18 90:1 YouTube 43:13,18 <hr/> Z Zack 1:4 4:7,14 5:2 8:22 30:7 42:4 45:13,17 110:11 111:10 124:2 126:18 127:8 128:22 129:23 131:22 132:2 135:8 141:2,6 146:22 151:12 152:13,24 153:21 157:14 160:2,5,8 160:18 162:2,18 164:20 165:17 Zack's 127:12 130:6 154:3	161:15 166:13 ZDP 39:17 40:2 50:21 53:5 59:16 80:6 108:8 160:4 160:15 162:23 Zoom 46:6 47:5,20 124:16,21 125:8 125:12,15 126:1 130:12 153:8,14 156:8,22 159:9 169:10 <hr/> 0 00 105:19 00042 155:14 00206 160:4 002368 105:20 002441 92:14 01507 108:8 0222 160:15 02247 50:21 02250 59:16 02419 80:7 02441 101:17 02442 100:20 02934 39:18 40:2 06320 2:6 <hr/> 1 1 3:12 5:5,7 9:18 15:24 85:24 1/19 108:6 1/19/2021 109:17 1:00 123:17 1:33 123:19 10 3:21 25:23 100:7 100:22 118:8 144:6 155:11,14 155:16 10:07 1:17 10:08 4:5 10:54 100:8,22 10:55 109:19 105 3:18 108 3:19 11 3:22 109:18 159:21,24	11:10 50:15 11:11 50:17 11:53 79:21 12 25:23,23 92:17 162:24 165:8 12:03 79:23 126 3:20 14 140:1 1500 1:18 2:11 4:5 1507 108:20 155 3:21 159 3:22 16 145:22 168 3:8 18 123:23 128:23 133:1,2,22 134:10 160:10 169:9 18th 114:2 120:19 120:24 121:13,17 129:17 19 133:1,23 134:10 134:10,15 136:1 19-20 3:13 19102 2:12 19th 121:10 <hr/> 2 2 3:13 31:5,8,10 83:15 87:7 2/12 165:8 2:23-cv-02281-WB 1:5 4:8 2:26 159:15 2:30 159:12 2:37 159:17 2:50 168:8 2:55 168:10 2:58 170:1 20 22:16 20-21 3:14 2015 36:15,16 2018 36:24 2019 31:11 34:11 34:16 47:12 2019-2020 40:13 49:13
--	---	---	---	---

Matthew Rigilano

Page 195

2020 19:17 20:2,12 26:4 29:8 30:6 31:12 38:11,12,14 38:17 39:9 40:4 40:15,18,23 46:21 48:14 49:13,18 76:20 80:24 82:8 92:2,17 93:3 94:19 95:24 100:7 100:22 105:19 115:20 123:23 128:23 133:2 2020-2021 40:13 44:13 49:14 50:22 2020-2022 48:9 114:19 20201 39:10 2021 39:9 40:4 41:7 45:19,23 109:18 156:6 160:14,17 162:24 164:12 165:9 169:9 2022 29:8 30:7 41:8 46:21 63:23 2024 1:16 4:5 20th 20:24 35:21 121:11 21 156:6 215-513-7278 1:23 223 160:11,19,20 2249 53:5 23 140:1 230 162:23 233 162:19 24 143:9 2442 100:14 27 160:14,17 28 162:18 <hr/> 3 <hr/> 3 3:14 39:5,6,8 46:19 80:24 88:13 88:14 146:8,10 30 148:2 300 106:9 31 3:13 105:18	34 151:8,16 38th 1:18 2:11 4:6 39 3:14 <hr/> 4 <hr/> 4 3:7,15 50:10,18 50:20 77:19 40 53:12 404 2:5 41 144:5 43 156:17 44 136:2 45 134:15 145:22 47 146:8,10 49 150:16,17 151:10,11 4C's 82:12,17 107:6 <hr/> 5 <hr/> 5 3:12,16 80:5,9 85:24 93:10 143:9 50 3:15 53:11 55:23 56:1 51 151:8,15 59 53:15 <hr/> 6 <hr/> 6 3:17 92:5,12,16 94:19 100:22 105:6 116:5 134:11 137:11 64 53:16 <hr/> 7 <hr/> 7 3:18 93:3 94:19 95:24 105:14,15 105:17 106:13 7:23 95:24 70s 84:3 7th 93:19 <hr/> 8 <hr/> 8 3:19 83:15 87:7 88:14 108:2,3,5 116:5 142:3 8:34 93:3 80 3:16	<hr/> 9 <hr/> 9 1:16 3:20,24 4:5 126:13,14 133:1 146:10 9:24 99:3 9:52 93:19 92 3:17 9th 98:22 99:3		
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ZACK DE PIERO, :
 :
 Plaintiff, : NO. 2:23-cv 02281-WB
 :
 -vs- :
 :
 PENNSYLVANIA STATE UNIVERSITY, :
 :
 et al, :
 :
 Defendants. :

- - -

VIDEOTAPED REMOTE DEPOSITION

DEPONENT: Carmen Borges

DATE: June 24, 2024

TIME: 11:14 a.m.

REPORTER: Vicki Mengel, Notary Public

FARRELL COURT REPORTING

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Carmen Borges

Page 2

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Farrell Court Reporting

Carmen Borges

Page 3

1 I N D E X

2

3 WITNESS PAGE

4

5 CARMEN BORGES

6

7 BY: MR. ALLEN 5

8 BY: MR. SMITH 264

9

10

11 E X H I B I T S

12

13 Borges 1 Notice of deposition 26

14 Borges 2 ZDP 02247 25

15 Borges 3 Census data 37

16 Borges 4 PSU 2631 42

17 Borges 5 PSU 2622 46

18 Borges 6 PSU 02658 83

19 Borges 7 PSU 4123 98

20 Borges 8 PSU 412 107

21 Borges 9 ZDP 0138 113

22 Borges 10 ZDP 175 128

23 Borges 11 PSU 2415 130

24 Borges 12 ZDP 0181 134

Farrell Court Reporting

Carmen Borges

Page 4

1	E X H I B I T S		
2			
3	Borges 13	PSU 2572	157
4	Borges 14	Notes	158
5	Borges 15	PSU 03236	159
6	Borges 16	ZDP 55	162
7	Borges 17	PSU 2537	166
8	Borges 18	Bates 1546	182
9	Borges 19	PSU 03154	185
10	Borges 20	Audio clips	240
11	Borges 21	PSU 01281	241
12	Borges 22	Penn State Values	243
13	Borges 23	Bates 03347	250
14	Borges 24	ZDP 088	251
15	Borges 25	PSU 0612	254
16	Borges 26	PSU 04137	260
17	Borges 27	PSU 3278	265
18	Borges 28	PSU 4934	267
19	Borges 29	PSU 4134	269
20	(Exhibits attached to transcript.)		
21			
22			
23			
24			

Farrell Court Reporting

Carmen Borges

Page 5

1 CARMEN BORGES, was called as a witness and after
2 having been first duly sworn, according to law, was
3 examined and testified as follows:

4 BY MR. ALLEN:

5 Q. So Ms. Borges, my name is Michael Allen. I am an
6 attorney representing Zack De Piero, who's --

7 MR. SMITH: Let's go off the record for a minute.

8 (A discussion was held off the record.)

9 BY MR. ALLEN:

10 Q. So Ms. Borges, sorry for those technical
11 difficulties. There's been a few technical challenges
12 this morning. Thanks for your patience. I was saying I'm
13 the attorney for Zack Di Piero in this case. I'm just
14 gonna go over at the beginning a few sort of rules of the
15 road for a deposition. Have you ever been deposed before?

16 A. Yes, I have.

17 Q. When were you deposed?

18 A. About 10 years ago.

19 Q. What was the nature of the case?

20 A. Denial of remote work or some thing -- was
21 working remotely. And then, he -- he began to show
22 performance issues, and they had to withdrew his right to
23 work remotely, and so it -- yeah.

24 Q. And that was in while you were working for Penn

Farrell Court Reporting

Carmen Borges

Page 6

1 State University?

2 A. Yes.

3 Q. And were the methods of taking depositions
4 explained to you at that time?

5 A. Yes, I think so.

6 Q. So you know that this is an extension of the
7 court. We're creating a record for the court, and that's
8 the purpose of the deposition is more or less to say -- to
9 find out what you would say at trial. Because it's an
10 extension of the court, there's -- there are formalities
11 we have to observe. So for instance, although there's a
12 video and if you seem that you're shaking your head or
13 nodding your head, that doesn't appear on the transcript.
14 So when I ask you a question, I'm gonna ask that you
15 answer audibly. Do you understand?

16 A. Yes.

17 Q. Likewise, there are lots of things we say like
18 uh-huh, uh-uh, hmm-hmm. We use those things in normal
19 conversation. But because of the formality of this
20 transcript and record, I'm going to be asking you to
21 answer audibly yes, no to questions, things of that
22 nature.

23 Is there anything that would interfere with your
24 ability to answer questions truthfully today?

Farrell Court Reporting

Carmen Borges

Page 7

1 A. No.

2 Q. You're not on any medications?

3 A. No.

4 Q. Not suffering from any illness that would affect
5 your memory?

6 A. No.

7 Q. Okay. Thank you. As you probably learned in
8 your previous deposition, your attorney may object from
9 time to time. That's a normal part of building the record
10 for trial. It does not relieve you of the obligation to
11 answer questions that have been asked. There are certain
12 instances where he may direct you not to answer. Those
13 will be very clear if he objects and directs you not to
14 answer, so that is not an issue. But again, if it comes
15 up, it will be very clear. Otherwise, you will be
16 required to answer a question despite an objection your
17 attorney may make. Is that clear?

18 A. That's clear.

19 Q. Okay. And you understand the meaning of oaths,
20 correct?

21 A. Yes.

22 Q. You understand that you're obligated to tell the
23 truth --

24 A. Yes.

Farrell Court Reporting

Carmen Borges

Page 8

1 THE REPORTER: I'm sorry. The volume is getting
2 difficult -- difficult at times.

3 THE WITNESS: What if I speak louder? Can you
4 hear me like this?

5 BY MR. ALLEN:

6 Q. So another thing I wanted to explain is feel free
7 to interrupt me at any time. If you need a break, you can
8 get a break, obviously. The only thing I ask is that you
9 answer any question that has already been posed to you.

10 The second thing is if you need to interrupt me
11 to ask for clarification, feel free to do so. I can
12 guarantee you I won't feel offended in any way. I would
13 rather have you answering a question that you understand
14 than one that you're guessing about.

15 To that extent, however, if you answer a
16 question, I am going to assume you understood the question
17 as asked. Is that clear?

18 A. That's clear.

19 Q. I'm gonna ask if you have done anything to
20 prepare yourself for the deposition today.

21 A. Other than reviewing whatever I had about the
22 case, which is -- it's been a long time.

23 Q. And what notes did you review about the case?

24 A. The ones that we provided.

Farrell Court Reporting

Carmen Borges

Page 9

1 Q. So you provided certain documents to your counsel
2 in this case. Can you identify which documents those were
3 specifically?

4 A. Notes of interviews, interview.

5 Q. Interviews for what?

6 A. For Zack Di Piero's complaint.

7 Q. Did you review other notes in addition to the
8 notes you reviewed for Zack Di Piero's complaint?

9 A. I don't think there were any other notes.

10 Q. And by Zack Di Piero's complaint, you mean the
11 complaint that he submitted to Penn State or the complaint
12 in this case in a federal lawsuit in the Eastern District
13 of Pennsylvania?

14 A. The complaint he submitted to Penn State.

15 Q. Have you spoken with anyone in preparation for
16 your deposition today?

17 A. Other than the attorney?

18 Q. Can you identify your attorney? I don't want to
19 ask you what you discussed with your attorney, but I am
20 entitled to know whether you have spoken to your attorney
21 in preparation for the deposition today.

22 A. Yes, I did. I was.

23 Q. And did you speak to anyone else?

24 A. No.

Farrell Court Reporting

Carmen Borges

Page 10

1 Q. And about how much time did you dedicate to
2 preparing for your deposition today?

3 A. Um, we met for two hours. No, not even two
4 hours.

5 Q. Okay.

6 A. Yeah. I can't recall exactly the amount of time,
7 but it was enough time, the necessary time to --

8 Q. Now, I wanna ask you some questions about the
9 nature of your job at Penn State and your qualifications
10 and so forth. I recall in one document you indicated that
11 you were from --

12 A. I am originally from Puerto Rico.

13 Q. So not another country?

14 A. Good. I'm glad to hear that from you. And I
15 heard -- you should speak Spanish now. I heard your
16 daughter was --

17 Q. (Phrase in Spanish.)

18 A. (Phrase in Spanish.)

19 Q. (Phrase in Spanish.)

20 A. Perfecto.

21 Q. And I believe that you had indicated to Dr. De
22 Piero that where you came from, you were considered white;
23 is that correct?

24 A. That's correct.

Farrell Court Reporting

Carmen Borges

Page 11

1 Q. Can you explain what you mean by that?

2 A. Well, it means that I understand the issues in
3 this country.

4 Q. Right.

5 A. The racial issues.

6 Q. And what racial issues do you mean?

7 A. The racial history of -- of the country.

8 Q. And when did you leave Puerto Rico to come to the
9 United States?

10 A. My husband got a position at Penn State. He was
11 a professor at Penn State, so we moved here from Puerto
12 Rico about 30 some years ago, 30 plus.

13 Q. And you're married to an employee of Penn State?

14 A. My husband was a professor, and he's retired.

15 Q. When did he retire?

16 A. He retire about 10 years ago.

17 Q. What did he teach at Penn State?

18 A. Engineering.

19 Q. Have you been a victim of racial discrimination
20 in the United States?

21 A. No, not that I can think of.

22 Q. And I guess the question to this -- the answer to
23 this question would be self-evident, then. Have you ever
24 been the object of racial discrimination at Penn State?

Farrell Court Reporting

Carmen Borges

Page 12

1 A. Not that I can think of, no.

2 Q. And what would you consider yourself to be if you
3 were to identify your own race?

4 A. White.

5 Q. Explain your job at Penn State.

6 A. Um, I work in the affirmative action office.
7 I've been there 36 years. Mostly, you know, in complaints
8 of discrimination, my focus or my preference or my --
9 mediation or the solution of complaints.

10 THE REPORTER: I'm sorry. I didn't catch the
11 full answer.

12 THE WITNESS: My main focus in the office is
13 consultations and problem solving and resolution of --
14 of -- of conflicts in the workplace that typically result
15 in -- in complaints.

16 BY MR. ALLEN:

17 Q. How has your job changed over time?

18 A. It's more structured now, more process oriented.

19 Q. What processes are you --

20 THE REPORTER: I didn't catch the full question.
21 I'm sorry. I'm sorry, everyone.

22 MR. ALLEN: I was asking -- can you read back the
23 witness's last answer?

24 (The court reporter read back the last question and

Carmen Borges

Page 13

1 answer.)

2 BY MR. ALLEN:

3 Q. And my question for you is what processes have
4 changed in the intervening time that you're referring to
5 in that answer?

6 A. Um, the university has established a system, a
7 broader, bigger system for people to file complaints.
8 Before, people would, you know, on their own decide to
9 file a complaint and go to our office. Now, they have,
10 you know, onlines, the bias. They have different sources
11 to file complaint. So we are getting, you know,
12 complaints from very different sources, you know, and lots
13 of more complaints.

14 Q. Is there an initiative at Penn State which has
15 been summarized as if you see something, say something?

16 A. Yeah. That's what -- you know, I mean, that's
17 what -- that's what's created so much more awareness
18 and -- and -- and, you know, more -- more complaints
19 coming in. Uh-huh.

20 Q. When was this see something, say something policy
21 introduced?

22 A. That's been about four, five years.

23 Q. Was it introduced around the 2020 time frame?

24 A. Well, that was Covid at that time. Yeah. No.

Carmen Borges

Page 14

1 Yes. Yes, it was before that.

2 Q. So -- and I know memory is what it is. But it
3 was approximately shortly before the Covid outbreak that
4 this new --

5 A. About that. I would think so, yeah, shortly
6 before the Covid.

7 Q. Okay. So just to get a clean record, so there
8 was a new policy introduced emphasizing if you see
9 something, say something, and it was introduced shortly
10 before Covid?

11 A. Yeah.

12 Q. And you mentioned in a previous answer something
13 about bias complaints. Did I get that right?

14 A. Yes. Uh-huh.

15 Q. What is a bias complaint?

16 A. When somebody is being treated differently, I
17 would think -- would say because of -- of -- of certain
18 characteristics.

19 Q. What characteristics?

20 A. There's a long list of them. I mean, everybody
21 has protection under those characteristics.

22 Q. Well, could you name them if you could, please?

23 A. Age, gender, disability, race.

24 THE REPORTER: I didn't catch the question.

Carmen Borges

Page 15

1 THE WITNESS: I don't have them all in my -- in
2 my memory, but those are the ones that -- that I can say
3 for now.

4 BY MR. ALLEN:

5 Q. Is a bias complaint supposed to address legal
6 discrimination?

7 A. What is legal discrimination?

8 Q. Well, that's what I'm trying to get at because
9 it's mentioned in some of the documents we'll be reviewing
10 today, so I'm trying to understand what the difference is.

11 What I mean to ask is do bias -- are bias
12 complaints supposed to address behavior that is defined as
13 discrimination under antidiscrimination laws?

14 MR. SMITH: Objection to form. I'm sorry.
15 Object to form. I'll speak up. I objected to the same
16 question before.

17 MR. ALLEN: While we're at it, sorry. I'm gonna
18 do some legalese here. We agreed to stipulate that we
19 will reserve all objections except as to form for the time
20 of trial.

21 MR. SMITH: Agreed.

22 BY MR. ALLEN:

23 Q. Sorry. You just mentioned a long list of things
24 that would encompass bias at Penn State. Do you remember

Carmen Borges

Page 16

1 talking about that? And you could remember a few
2 categories, but not all of them. Do you remember telling
3 me that?

4 A. You mean now?

5 Q. In our deposition.

6 A. Oh, yeah. Yeah. Uh-huh.

7 Q. Yes. And this is what I'm trying to ask about.
8 This list of categories that might constitute bias at Penn
9 State, are these supposed to be categories that derive
10 from the law?

11 A. Under the protection of the categories, yeah.

12 Q. So, for instance, you would agree, wouldn't you,
13 that all universities discriminate on the basis of
14 intelligence at some level, right?

15 A. Well, that's not a category.

16 Q. That's my question. That discrimination is
17 legal, right?

18 A. Oh, yes. There's -- there's legal
19 discrimination.

20 Q. And giving a student an F for doing a bad job,
21 that's not discrimination, is it?

22 A. No, unless a student challenges that and it's
23 proven that -- that he didn't -- the work did not deserve
24 an F, so --

Carmen Borges

Page 17

1 Q. Who gets to decide whether work deserves an F at
2 Penn State?

3 A. That's an academic process for -- for students.
4 And faculty -- faculty decide that.

5 Q. But my question was it's legal to discriminate
6 against a student by giving them an F provided the
7 discrimination is on the basis of them not doing their
8 work, correct?

9 A. Correct.

10 MR. SMITH: Objection to form.

11 BY MR. ALLEN:

12 Q. Back to your position at Penn State. Who's your
13 immediate supervisor?

14 A. Suzanne Adair.

15 Q. What's her position?

16 A. Assistant -- assistance vice president for
17 affirmative action, yeah.

18 Q. And has the name of your office changed recently?

19 A. Yes.

20 Q. Do you recall when?

21 A. About three, four months ago.

22 Q. What did it change to?

23 A. Office of Equal Opportunity and Access.

24 Q. Do you know why the name was changed?

Farrell Court Reporting

Carmen Borges

Page 18

1 A. I guess outdated. No, not really a reason that
2 I'm --

3 Q. Was your office ever responsible for implementing
4 affirmative action policy at Penn State?

5 A. Yes.

6 Q. What affirmative action policies were you
7 implementing at Penn State?

8 A. Hiring procedures, process for hiring affirmative
9 actions goals to have to -- you know, to reach out and
10 expand the search to -- to create a wider pool of
11 applicants. That -- that was an enforcement or that we --
12 we do that, we do from our office. Every search is
13 required to -- to do outreach effort and create the best
14 possible diverse pool of applicants for every position.

15 Q. How would you define a best possible diverse pool
16 of applicants from your office?

17 A. The search, where have they reach out? Where
18 have they advertise the vacancy? It's about advertising
19 and -- and -- and reaching out to create a diverse pool of
20 applicant. That always was the goal of our office. Once
21 you have a diverse pool of applicants, then, you know, the
22 search committee can have -- can work with that.

23 Q. So my question is how do you define a diverse
24 pool?

Carmen Borges

Page 19

1 A. People from different -- well, different
2 ethnicities, although the -- the search committee would
3 not know that. But at some level, our office would --
4 would have known how -- what the pool looked like.

5 Q. So you were drawn to recruit diverse pool of
6 applicants. Do you mean diverse in --

7 A. That's what affirmative action is -- requirements
8 are about.

9 Q. And who sets these requirements at Penn State?

10 A. Well, affirmative action as -- as an executive
11 order is clear on what are the -- what are the categories,
12 the four categories that are more so the focus of
13 affirmative action.

14 Q. Did you just say four categories or did I
15 misunderstand?

16 A. Four, yeah.

17 Q. What are those four categories?

18 A. Black, Hispanics, Asians and Native American I
19 think the other one.

20 Q. So solely racial or ethnic categories?

21 A. Yeah.

22 Q. And when your office changed August -- excuse me,
23 you said three to four months ago?

24 A. Uh-huh.

Carmen Borges

Page 20

1 Q. When your office changed to become the office of
2 ethics and compliance, did I get that right?

3 A. Equal opportunity.

4 Q. Equal opportunity. Excuse me.

5 A. And access.

6 Q. Office of Equal Opportunity and Access.

7 A. OEOA. We're still struggle with that. It was
8 much easier AAO than OEOA.

9 Q. I agree. It's more difficult to say. Has there
10 been a change in your approach to affirmative action
11 policies in hiring since the name change?

12 A. No.

13 Q. And you also said that the hiring committee of
14 whatever sort wouldn't know anything about the diverse --
15 the diversification of the pool that was selected by your
16 office?

17 A. Yeah. They would not know.

18 Q. Does that mean that the hiring committees at Penn
19 State operate in a color blind fashion?

20 MR. SMITH: Objection to form.

21 THE WITNESS: In many ways, yes. Yes, they do
22 because they don't know the diversity of the pool, so
23 there's no way for them unless -- unless they guess based
24 on other information. They would not officially know how

Farrell Court Reporting

Carmen Borges

Page 21

1 the pool identify themselves.

2 BY MR. ALLEN:

3 Q. So I'm just trying to understand how the process
4 works. So at what level is hiring done at Penn State? At
5 the department level, at the dean's level, at the
6 president's level?

7 A. It's done at the unit level.

8 Q. The unit being the department?

9 A. If it's academic, it's the department. If it's
10 staff, it's a unit.

11 Q. And how does the unit compose a hiring committee?

12 A. The dean names the faculty.

13 Q. And how is a job description drafted to solicit
14 candidates?

15 A. It's -- it's also an academic -- you know, it's
16 also based -- the faculty does that based on their needs
17 or what the position, what they need, so --

18 Q. And then that's published in whatever venue is
19 most likely to draw candidates?

20 A. It's published in whatever venue they -- they
21 choose to. They go to conferences and try to recruit in
22 conferences. Now online, there's a lot of, you know,
23 other sources online, so --

24 Q. And at what time does the -- well, it used to be

Carmen Borges

Page 22

1 called the affirmative action office. At what time did
2 the affirmative action office get involved?

3 A. Let's see. I'm thinking because that took a
4 major change since, you know, we -- a few years ago. We
5 would gets information in paper form about the applicant,
6 by about, you know, the search committee and, you know,
7 all the information. Now, it's -- it's -- it's on --
8 it's -- it's more centralized. You know, with technology,
9 it's all centralized, so we don't -- we don't get it.
10 There is now share service is what they call this. All
11 that information now is centralized.

12 Q. You mean it's in a centralized database or --

13 A. Yeah.

14 Q. Is that kind of a university management program?

15 A. Yeah, exactly.

16 Q. I got you.

17 A. That's a big change.

18 Q. So my -- my question is different, though. My
19 question is at what time in this application process does
20 the affirmative action office, now renamed the --

21 A. OEOA.

22 Q. At what time do they get involved in a typical
23 hiring process?

24 A. We don't get involved at all.

Carmen Borges

Page 23

1 Q. When did that stop?

2 A. With all the -- all the technology, when
3 everything went -- how do I say? Everything is
4 centralized now, more centralized. So how we get involved
5 in terms of discussing with -- with departments and with
6 units is the awareness and the importance of -- of
7 reaching out and creating a diverse pool. That's --
8 that's the extent of -- of -- of the information we -- we
9 provide.

10 Q. And the diversity is still defined in these four
11 categories that you explained before?

12 A. For affirmative action regulation, the purposes
13 of that, those are the categories. Now, they're broader.
14 You know, now with -- now, they're broader because, you
15 know, it's now -- you know, everybody brings -- brings --
16 brings some sort -- some diversity to the table.

17 Q. How are they broader? What is this other
18 diversity that other people now bring to the table that
19 they didn't bring before?

20 A. Um, well, everybody. Everybody, you know.

21 Q. Did they suddenly -- did they suddenly bring this
22 diversity to the table now and they didn't before when you
23 only focused on four categories?

24 A. Well, I suppose they were there. They were --

Carmen Borges

Page 24

1 they were -- they were there all the time. It's just --
2 what I'm speaking is about requirements of -- of for
3 affirmative action, where the four categories. But that
4 wasn't -- that was the minimum, you know. That wasn't --
5 that was our obligation to -- to monitor. But the search
6 committees, you know, had free range to hire, you know,
7 the best qualified applicant. And there, you have tools
8 with a lot of diverse people.

9 Q. So again, my question is how are you defining
10 diversity, this suddenly new expanded definition of
11 diversity? How is it defined now that it wasn't defined
12 as earlier?

13 A. I think now, it's defined like everybody has --
14 everybody is diverse, basically.

15 Q. So if everyone's diverse, what meaning does
16 diversity have?

17 MR. SMITH: Objection to form.

18 THE WITNESS: I think the focus now is more
19 accepted and understanding everybody's -- what everybody
20 brings to the table. In other words, everybody's diverse.

21 BY MR. ALLEN:

22 Q. So if everyone is diverse, no one is excluded,
23 right --

24 A. Exactly.

Carmen Borges

Page 25

1 Q. -- by anyone? You can have a department of all
2 one kind of American, I guess let's say Hispanics. Since
3 they're all diverse, there would not be exclusion of
4 anyone.

5 MR. SMITH: Objection to form.

6 BY MR. ALLEN:

7 Q. That's how that would work?

8 A. What do you mean exclusion of anyone?

9 Q. What I mean is you just testified that everyone
10 is diverse, right?

11 A. Everybody brings something to the table. You
12 know, people are people, and people are different, and
13 everybody brings some different characteristics.

14 Q. So there's no reason to exclude anyone from a
15 pool of applicants or add anyone to a pool of applicants,
16 is there?

17 A. There's no reason to exclude anyone as long as
18 the qualifications are met for the -- for the -- for the
19 position.

20 Q. I'm gonna introduce these for the record as
21 Exhibit 2.

22 (Exhibit Borges 2 was marked for identification.)

23 BY MR. ALLEN:

24 Q. So I'm just going to -- incidentally, Ms. Borges,

Farrell Court Reporting

Carmen Borges

Page 26

1 if you need any time to read these exhibits or examine
2 them -- some of them will be lengthy, some of them will
3 not be -- but just tell me. They're also printed double
4 sided. Just tell me.

5 MR. SMITH: Not to interrupt. Did we mark the
6 exhibit? I just see the amended dep notice, but I don't
7 think we --

8 MR. ALLEN: Oh, I don't think that has been
9 marked. Madame Reporter, have I marked Exhibit 1 yet?

10 THE REPORTER: You have not.

11 BY MR. ALLEN:

12 Q. May I ask you to put this one aside for a second?
13 Can you grab the first one there? I'm gonna mark for
14 Exhibit 1 a document captioned re-notice of deposition of
15 Carmen Borges.

16 (Exhibit Borges 1 was marked for identification.)

17 BY MR. ALLEN:

18 Q. I'm sorry. If you want me to pronounce your name
19 Borges, I'm happy to do that. But if I pronounce your
20 name --

21 A. However you want. I'm used to Borges, but you
22 got it right. It's really Borges.

23 Q. You recognize this document, Exhibit 1?

24 A. Yes.

Farrell Court Reporting

Carmen Borges

Page 27

1 Q. And is it accurate to say you've appeared for
2 this deposition today in response to this re-notice of
3 deposition?

4 A. Yes.

5 Q. Okay. That's all I have to say about that one.
6 And we can put these aside, and they'll go to the court
7 reporter in electronic form. This I've marked as Exhibit
8 2. It's a document captioned 2020 to 2021 ad hoc
9 committee on diversity, equity and inclusion, DEI year end
10 report draft. Do you see that?

11 A. Uh-huh.

12 Q. And I'm just going to say for the record that the
13 Bates number on the first page is ZDP 02247; is that
14 correct?

15 A. That's correct.

16 Q. I don't know if you understood this before, but I
17 assuming so. The attorneys place little numbers on all
18 the documents. Those are called Bates numbers, and they
19 just give a continuous stream of page numbers to every
20 document produced in this case. So when I refer to Bates
21 numbers, you'll know what I mean, correct?

22 A. Uh-huh.

23 Q. Okay. Were you ever presented with this document
24 before?

Carmen Borges

Page 28

1 A. No.

2 Q. Did you know about ad hoc committee on diversity,
3 equity and inclusion that was active at Penn State in --

4 A. No.

5 Q. -- this time period?

6 A. Not at all.

7 Q. One thing you'll need to do is wait for me to
8 finish my questions.

9 A. Okay.

10 Q. And we all do this, and I will try to wait for
11 you to finish your answer in return. Okay?

12 Do you recognize the committee members that are
13 listed in the second block paragraph there?

14 A. Some of them.

15 Q. You see that Grace Lee-Amuzie was one of the
16 cochairs, correct?

17 A. Correct.

18 Q. And a member of the committee was also Lili or
19 Lila Naydan?

20 A. Correct. I don't see her -- oh, her name is
21 here, yeah. Yes. Yes.

22 Q. And there's also a staff member Anessah Smith
23 listed as a committee member, correct?

24 A. I see it here. I don't know about that.

Carmen Borges

Page 29

1 Q. Okay. And who is Grace Lee-Amuzie?

2 A. A faculty member, to my understanding.

3 Q. In what department?

4 A. I'm not sure.

5 Q. How about Lila Naydan? Do you know what her
6 position is at the Penn State University?

7 A. She's the coordinator of the writing program at
8 Abington.

9 Q. Does she have any other positions during the time
10 2020 to roughly 2022?

11 A. Not aware.

12 Q. And how about Anessah Smith? What is her
13 position at Penn State University?

14 A. I don't know.

15 Q. And if you skip down to page ZDP 2249, you see
16 where it says Rationale Abington?

17 A. Yes.

18 Q. In your position as an associate director of
19 OEOA, affirmatively -- excuse me, formerly affirmative
20 action office, were you responsible for the Penn State
21 Abington?

22 A. Not for DEI matters.

23 Q. I understand. Were you responsible for
24 implementing the affirmative action policy of Penn State

Farrell Court Reporting

Carmen Borges

Page 30

1 at Penn State Abington?

2 A. Yes.

3 Q. And Penn State Abington's a regional campus,
4 right?

5 A. Yes.

6 Q. The main campus of Penn State being Penn State
7 in --

8 A. University Park.

9 Q. University park. Thank you very much. You know
10 approximately how many students Penn State Abington has?

11 A. No.

12 Q. Incidentally, who would be responsible for
13 implementing the DEI policies of Penn State Abington?

14 A. The chancellor, I would think.

15 Q. Who was the chancellor during the 2020-2022 term?

16 A. I'm thinking the current -- the current
17 chancellor.

18 Q. It will say in the records. Just reading this
19 Rationale Abington, it says Penn State Abington ascribes
20 to a mission of -- mission and vision that seeks to,
21 quote, provide accessible education to a diverse student
22 body with faculty who facilitate opportunities for growth
23 by being responsive to students' needs and talents. Did I
24 read that correctly?

Carmen Borges

Page 31

1 A. Where are you?

2 Q. It's the first sentence of the section Rational
3 Abington.

4 A. Yes, I see it.

5 Q. Do you have any reason to believe that diverse
6 student body in the way it's used here is -- means
7 anything different from what you described diversity to
8 mean when you were testifying today?

9 A. I mean, diverse student body and diversity
10 includes everybody that brings something to the table.

11 Q. Okay. So it's your testimony today that in
12 writing about this in 2020-2021 in this draft report, they
13 meant that everyone was diverse?

14 MR. SMITH: Objection to form.

15 THE WITNESS: I don't have an answer for that.

16 BY MR. ALLEN:

17 Q. Okay. See where in parenthesis it says Penn
18 State Abington 2020 NT? Do you see that?

19 A. Uh-huh.

20 Q. You know what that refers to?

21 A. No, I don't.

22 Q. Incidentally, if you don't know, that's a
23 perfectly honest answer. I don't want you to feel that
24 you have to answer something that --

Farrell Court Reporting

Carmen Borges

Page 32

1 A. No. I wanna make it clear that I am not a DEI
2 person.

3 Q. I understand.

4 A. You know, that I know there was a lot of these
5 things going on at the university and expectations, but
6 I -- that wasn't -- that wasn't my -- I wasn't -- I wasn't
7 involved in any of that.

8 Q. But your office was responsible for diversity
9 hiring, correct?

10 MR. SMITH: Objection to form.

11 THE WITNESS: Diversity hiring of employees,
12 yeah, faculty and staff, not students.

13 BY MR. ALLEN:

14 Q. Oh, I understand.

15 A. Uh-huh.

16 Q. So you weren't responsible -- just to be clear, I
17 think what you're saying is your office of affirmative
18 action was not responsible for recruiting a diverse
19 student body?

20 A. No.

21 Q. You see this, the -- excuse me. Strike that,
22 please.

23 You see the sentence that begins after the
24 parenthesis that we've just examined? It says Abington

Carmen Borges

Page 33

1 continues to serve a racially, culturally and ethnically
2 diverse population with 50 percent of students who
3 identify as minorities and 40 percent who identify as
4 first generation college students. While perhaps
5 comparatively diverse to other institutions, Abington
6 still has a majority white staff and faculty. And it
7 lists white staff as 59 percent and faculty as 64 percent,
8 correct?

9 A. Correct.

10 Q. And so you did have responsibility as -- in the
11 affirmative action office for addressing the white staff
12 and white faculty diversity, correct?

13 A. The diversity for -- right.

14 Q. So is it your testimony today that this 64
15 percent of white faculty qualified as diverse because
16 everyone's diverse?

17 MR. SMITH: Objection to form.

18 THE WITNESS: It doesn't say it's diverse. It's
19 64 percent of faculty. Abington has a majority white
20 staff, so yeah.

21 BY MR. ALLEN:

22 Q. And they're all diverse, according to your
23 testimony earlier today, because everyone's diverse,
24 right?

Farrell Court Reporting

Carmen Borges

Page 34

1 A. I don't know how to answer that. Everybody's
2 diverse, so everybody's -- this is talking about a
3 particular, you know, category there.

4 Q. And what category is --

5 A. The white staff and white faculty.

6 Q. Identified by race, correct?

7 A. Correct.

8 Q. And if you skip down to the next paragraph, it
9 starts the recommendations presented in this report are
10 significant to the Abington community for at least the
11 following reasons. First, because we recognize that the
12 many diverse perspectives that students, faculty and staff
13 can bring to the campus community; therefore, we believe
14 that it is important to hire faculty and staff who reflect
15 the student body.

16 Second, as a community of educators dedicated to
17 ongoing development, we need an array of diverse
18 perspectives in terms of training programs. And third, it
19 is important to teach diverse perspectives within the
20 curriculum through course content. Finally, because we
21 believe that diversity is not static, it is important to
22 make sure that these initiatives are sustained and
23 available over time. Did I read that correctly?

24 A. Yes.

Farrell Court Reporting

Carmen Borges

Page 35

1 Q. Were these the kind of policies that your office
2 was active in promoting at Penn State?

3 A. Um, not necessarily.

4 Q. When did your office not promote these kinds of
5 race based hiring policies at Penn State?

6 MR. SMITH: Objection to form.

7 THE WITNESS: We don't have race based hiring
8 policies. I mean, the concept here on -- in diversity or
9 the thinking if you have -- if there's a high number or
10 percentage of -- of faculty and staff of a certain
11 category and you have a high percentage of students from
12 another category, I mean, the logical thing is to think
13 okay, we need to -- we need to balance that out. Because
14 if Abington has 40 percent first generation college
15 students or minority students, so it would make sense
16 that, you know, you provide for those students or you
17 create a higher percentage of diverse faculty and staff.

18 BY MR. ALLEN:

19 Q. Diverse based on race, right?

20 A. Diverse based on race.

21 Q. And do you know of any evidence that diverse
22 students based on race are demanding that they only be
23 taught by the same percentage of faculty that --

24 A. No.

Carmen Borges

Page 36

1 Q. -- the student --

2 A. No.

3 Q. -- population makes up? You have to let me
4 finish. Let me phrase it again. Do you know of any
5 evidence that students are demanding at Penn State
6 Abington that they have to learn from faculty who have the
7 same percentage by race representation as is reflected in
8 the student body by race?

9 MR. SMITH: Objection to form.

10 THE WITNESS: I'm not aware of any -- of any
11 students' demands around that area.

12 BY MR. ALLEN:

13 Q. Do you know of any evidence that teaching is
14 ineffective if the faculty does not match the same racial
15 breakdown as the student body?

16 A. Say that again. Do I have what?

17 Q. Do you know of any evidence that teaching at Penn
18 State Abington is ineffective when the percentage by race
19 of faculty does not match the percentage by race of the
20 student body?

21 A. No, I'm not aware of any evidence. That -- that
22 would be a specific research project, but I'm not aware.

23 Q. This was never part of any of your training?

24 A. No.

Farrell Court Reporting

Carmen Borges

Page 37

1 Q. I'm just gonna introduce as Exhibit 3 some public
2 information from the United States sentence -- Census,
3 excuse me.

4 MR. SMITH: Can we put that aside?

5 MR. ALLEN: Yes, I think I'm done with Exhibit 2.
6 You can put that to the side, but just a last question.

7 BY MR. ALLEN:

8 Q. You were never aware of any final report or
9 anything of that nature that grew out of this project that
10 we just discussed in Exhibit 2?

11 A. No.

12 (Exhibit Borges 3 was marked for identification.)

13 BY MR. ALLEN:

14 Q. Okay. So if you would just look at Exhibit 3,
15 which is the document I just put before you?

16 A. If I can see it.

17 Q. I understand. It is quite small. This is U.S.
18 Census data which is from a public source published by the
19 United States government. I'm going to represent that to
20 you. Now, I understand this is very small. I apologize.
21 I have certainly reached an age at which that's not a very
22 pleasant experience for me sometimes downright impossible.

23 A. Okay.

24 Q. But you do understand that one of the factors

Farrell Court Reporting

Carmen Borges

Page 38

1 tracked by the United States Census is population by race?

2 A. Uh-huh.

3 Q. And if you see, there's race and Hispanic origin
4 is one of the headings about a third of the way down the
5 page. It's the second heading?

6 A. Uh-huh.

7 Q. And white alone as a percentage of the average
8 United States population is 75.5 percent. Do you see
9 that?

10 A. I see that. Yeah.

11 Q. So the percentage of population of faculty at
12 Penn State Abington that's white is 64 percent. Remember
13 seeing that?

14 A. Uh-huh.

15 Q. So that's actually far less than the population
16 at large?

17 A. Correct.

18 Q. Doesn't that suggest that Abington is
19 discriminating against white faculty?

20 MR. SMITH: Objection to form.

21 THE WITNESS: No, I don't think. I don't see how
22 that suggests.

23 BY MR. ALLEN:

24 Q. You think it's just by random chance that the

Carmen Borges

Page 39

1 percentage of white faculty is 11 percent lower on average
2 than the U.S. population at large?

3 MR. SMITH: Objection to form.

4 THE WITNESS: I don't -- I don't know how to
5 answer that.

6 BY MR. ALLEN:

7 Q. Did your office track the percentage of Black
8 faculty at Penn State Abington?

9 A. Um, yeah. That's captured for the affirmative
10 action plan.

11 Q. Was it larger or smaller than the percentage of
12 faculty -- excuse me. Larger or smaller than the
13 percentage of black Americans in the population at large?

14 A. I don't recall.

15 Q. Would your answer be the same if I asked you
16 about the three other categories you mentioned; Asian,
17 Hispanic and I believe you said American Indian?

18 A. Uh-huh. Native American. Native, yeah,
19 native --

20 Q. So although your office, the affirmative action
21 office now the OEOA office, had the responsibility for
22 promoting diversity on the basis of race, you don't know
23 the answers to those questions?

24 MR. SMITH: Objection to form.

Farrell Court Reporting

Carmen Borges

Page 40

1 THE WITNESS: Not off the top of my head. I
2 would need to go see the plan.

3 BY MR. ALLEN:

4 Q. Was that something your office tracked? Let me
5 strike that question.

6 Was the percentage by race of those four
7 categories tracked by your office among the faculty
8 population at Penn State Abington?

9 A. I mean, it is tracked university-wide. So I
10 suppose yeah, it's -- this goes by location, so Abington
11 should have their numbers in our affirmative action plan.

12 Q. And were you responsible in the affirmative
13 action office for implementing that plan?

14 A. We are responsible for collecting the data and
15 creating the plan, but the changes are -- are -- you know,
16 we're not responsible for -- for -- for the numbers.

17 Q. That wasn't my question. Once the plan is
18 promulgated, your office had a role in implementing the
19 plan, correct?

20 A. In discussing the plan with -- with units, yes.
21 The plan is discussed with -- with -- with each unit to
22 see how their numbers are looking.

23 Q. And you also had a role in trying to create
24 diverse hiring pools, correct?

Farrell Court Reporting

Carmen Borges

Page 41

1 A. It's encouraged.

2 Q. So that wasn't my question. My question was
3 whether your office had a role in creating these diverse
4 hiring pools on the basis of race.

5 A. Yes, that makes sense.

6 Q. Okay. If you just -- one more thing. I just
7 wanted to point out that there's also a breakdown in every
8 census document (unintelligible.) I'm not sure -- I don't
9 want to get my -- actually, I think I don't have the --
10 the correct -- I thought I had the population for the
11 Abington area, and I think I might not have the right
12 document. Hold on. I have Abington Town, Plymouth
13 County, so let's strike that question. I have the
14 wrong -- I had the wrong Abington.

15 Incidentally, do you know what the population of
16 Abington itself is by race?

17 A. No. I -- I -- I just assume it's the highest
18 across all the other campuses or areas of the university.

19 Q. I mean --

20 A. Based on -- based on their location. Huh?

21 Q. I mean, the municipality of Abington. Do you
22 know what the population breakdown of Abington the
23 municipality is on the basis of race?

24 A. No, I don't.

Farrell Court Reporting

Carmen Borges

Page 42

1 Q. Is that important to any of the diversity
2 calculations at the affirmative action office?

3 A. Well, it's important for the expectation of the
4 applicant pool, you should expect a higher applicant pool
5 of the population that are represented in an area.

6 Q. I'm gonna switch gears and talk about some of the
7 policies of Penn State. Before I do, were there various
8 antiharassment policies, professionalism policies and so
9 forth promulgated by Penn State?

10 A. Oh, there are -- there are non-discrimination
11 policies, yes.

12 Q. And are they any different for a regional campus
13 such as Abington?

14 A. No. They're university-wide.

15 Q So the policies are -- they conform university
16 wide?

17 A. Yes.

18 Q. Thank you. So I'm gonna introduce I think we're
19 up to Exhibit 4.

20 (Exhibit Borges 4 was marked for identification.)

21 BY MR. ALLEN:

22 Q. This -- this is a document captioned AC 47,
23 general standards of professional ethics. Did I read that
24 correctly?

Farrell Court Reporting

Carmen Borges

Page 43

1 A. Yes.

2 Q. And I'm just gonna represent that it has a Bates
3 number of PSU-De Piero 0022632. Oh, I'm sorry. I think I
4 started in the middle. It starts with 2631. You
5 understand if I just refer to these Penn State documents
6 that are Bates stamped PSU-De Piero as PSU Bates stamps so
7 we don't have to say PSU-De Piero every time?

8 A. Yeah. Well, there's the number of the policy,
9 no?

10 Q. Right. Exactly.

11 A. Uh-huh.

12 Q. I just want to avoid confusing you because
13 sometimes, my client's documents refer to his name. But
14 you'll understand if I say it's Bates marked PSU number,
15 number, number that I'm referring to this Bates down here?

16 A. That's okay.

17 Q. All right. So what is this policy?

18 A. This is an academic policy. Would not -- we
19 don't work much with this policy.

20 Q. Is your office responsible for enforcing this
21 policy?

22 A. No. This is an office of faculty affairs. It's
23 in the academic realm.

24 Q. And do you see under number one -- excuse me.

Carmen Borges

Page 44

1 Let me back up and strike that question.

2 You were aware of this policy, correct?

3 A. I was aware, generally aware whenever I had
4 needed to look for it, but it's not a policy that -- that
5 I'm very familiar with. This is -- this is administered
6 by the vice provost for faculty affairs by the faculty
7 senate. If the faculty has -- has an issue regarding
8 something related to this policy, it would -- it would go
9 to faculty senate from the committee, the faculty senate
10 committee.

11 Q. So it's a separate process for complaints that
12 might arrive under this policy -- as might arise under the
13 policies that your office enforce?

14 A. Yes.

15 Q. Okay. Were there cases where antiharassment
16 policies that were enforced by the office of affirmative
17 action conflicted with the policy for professional ethics?

18 MR. SMITH: Objection to form.

19 BY MR. ALLEN:

20 Q. Let me be specific. During your time at Penn
21 State, were there instances where a policy for
22 professional ethics conflicted with the antidiscrimination
23 policies that your office enforced, the affirmative action
24 office?

Carmen Borges

Page 45

1 A. I can't think of a situation.

2 Q. If you look down to number four in this policy,
3 see how the paragraphs of the policy are numbered?

4 A. Uh-huh.

5 Q. Number four, they're printed double sided.

6 A. No. It's fine.

7 Q. You see it?

8 A. Yeah.

9 Q. It says -- the second sentence there says they,
10 meaning college professors, respect and defend the free
11 inquiry of their associates. In the exchange of criticism
12 and ideas, they show due respect for the opinions of
13 others. Did I read that correctly?

14 A. That's correct. Yeah.

15 Q. And so it's your testimony today that that never
16 conflicted in your experience with the other affirmative
17 action policies that you were required to enforce at Penn
18 State?

19 A. I can't think of a time. I can't think of an
20 example or a situation.

21 Q. So you don't think --

22 A. Because these would go to faculty senate.
23 Somebody has a complaint around this topic, it goes to
24 faculty senate committee, faculty senate committee.

Farrell Court Reporting

Carmen Borges

Page 46

1 Q. And just because it goes to a different line of
2 enforcement, a different institutional route of
3 enforcement, does that somehow mean it can't conflict with
4 your antidiscrimination policies in the affirmative action
5 office?

6 MR. SMITH: Objection to form.

7 THE WITNESS: Well, I cannot think of an example
8 or a situation where this would apply.

9 BY MR. ALLEN:

10 Q. I think we'll have better luck with this one, if
11 I have it. I'm gonna introduce as Exhibit 5 another
12 document. Let's just put that one aside.

13 (Exhibit Borges 5 was marked for identification.)

14 BY MR. ALLEN:

15 Q. Exhibit 5 is captioned AD 91, discrimination and
16 harassment and related inappropriate conduct. Did I read
17 that correctly?

18 A. Yes.

19 Q. And the Bates number on the first page is PSU
20 2622. Did I read that correctly? 2622 is the Bates
21 number --

22 A. Oh, oh, oh. Yeah, yeah, yeah. Uh-huh.

23 Q. I'm just doing that for the record to make sure
24 we don't mix up exhibits. So this is Exhibit 5, and I'm

Carmen Borges

Page 47

1 just going to ask you if you are familiar with this AD 91
2 policy.

3 A. Yes, I am.

4 Q. What is the AD 91 discrimination and harassment
5 and related inappropriate conduct supposed to cover?

6 A. Complaints of discrimination and harassment.

7 Q. How is discrimination and harassment defined?

8 A. Can I look at the information I have? I mean, I
9 always struggle with these definitions, okay. So no?

10 MR. SMITH: Go on memory.

11 THE WITNESS: Well, it's -- it's --

12 MR. ALLEN: For the record, the witness has
13 referred to some notes, and I'm gonna ask that those be
14 produced in discovery --

15 THE WITNESS: Well, it's just definitions.

16 BY MR. ALLEN:

17 Q. -- that she's relied on. No, it's fine.

18 A. The definition is behavior that -- behavior that
19 would -- I need to -- I need to -- some definitions are
20 long.

21 MR. SMITH: Sure. Are you asking her how this
22 policy defines it, the definitions within this policy?

23 MR. ALLEN: Can you read the question before the
24 witness, Madame Court Reporter?

Farrell Court Reporting

Carmen Borges

Page 48

1 (The court reporter read back the question.)

2 THE WITNESS: Okay. Conduct of any nature that
3 denies an individual the opportunity to participate and
4 benefit from a university program that otherwise --
5 otherwise adversely affects a term or condition of the
6 individual's employment.

7 BY MR. ALLEN:

8 Q. And if you -- if you skip down to page 2 of the
9 document, which is actually PSU 02623, do you see how the
10 heading at the top of the page is harassment? Am I wrong?
11 Did I get that --

12 A. The policy statement.

13 Q. I'm sorry. I think it's 2624. I think it's page
14 3.

15 A. Oh, yeah. It should be here, the --

16 Q. I'm sorry. In looking at them online, I
17 sometimes --

18 A. Yeah, I know.

19 Q. So harassment is defined at the top of that
20 page --

21 A. Okay.

22 Q. -- 2624. Do you see?

23 A. Yes. Exactly that definition.

24 Q. Behavior consisting of physical or verbal

Farrell Court Reporting

Carmen Borges

Page 49

1 conduct, including acts of bias in capital letters, that
2 is sufficiently severe or pervasive such that it
3 substantially interferes with an individual's employment,
4 education or access to university programs, activities or
5 opportunities and would detrimentally affect a reasonable
6 person under the same circumstances. Did I read that
7 correctly?

8 A. Uh-huh.

9 Q. You have any reason why acts of bias is
10 capitalized in the middle of the sentence like that?

11 A. No idea.

12 Q. You don't know of any special definition of acts
13 of bias that this policy relies on?

14 A. No.

15 Q. Then the policy goes on to say harassment may
16 include, but is not limited to, verbal or physical acts,
17 graphic or written statements, threats or the use of slurs
18 or other derogatory language statements in reference to
19 others. Did I read that correctly?

20 A. Yes.

21 Q. So in reference to others, could that include,
22 say, slurs with regard to Black people?

23 A. Yeah. Slurs related to offending somebody or
24 related to somebody. yeah.

Farrell Court Reporting

Carmen Borges

Page 50

1 Q. Or famously in the media recently, you've got
2 people refer to calling for the genocide of the Jews or
3 something like that?

4 A. That would be a slur.

5 Q. And is this supposed to be enforced in a race
6 neutral manner?

7 A. Yes.

8 Q. And so if I ask about any racial category; Asian,
9 Hispanic and also I think you mentioned Native Americans
10 or also white people, they would come under this policy?

11 A. Yes.

12 Q. And then going on, it says whether the alleged
13 conduct constitutes prohibited harassment depends on the
14 totality of the particular circumstances, including the
15 nature, frequency and duration of the conduct in question,
16 the location and conduct in which it occurs and the status
17 of the individuals involved. Did I read that correctly?

18 A. That's correct.

19 Q. How would the status of the individuals involved
20 affect whether something is prohibited harassment?

21 A. Because, you know, if somebody's somebody's
22 supervisor or they're -- if they are on equal levels,
23 that's -- that would be the status. If it's a student and
24 like a person of, you know -- a faculty member and a

Carmen Borges

Page 51

1 student, the status would mean here the nature of their
2 positions at the university.

3 Q. Incidentally, can you define verbal conduct for
4 me? What does that mean?

5 A. Offensive or -- offensive language or insults
6 or --

7 Q. How is that different from speech?

8 A. Regular speech as something offensive is
9 different.

10 Q. So the difference is verbal conduct is offensive
11 and regular speech is not?

12 A. It depends what the regular speech is about.

13 Q. Well, that's why I'm asking you how you define
14 verbal conduct. You just testified that it is not regular
15 speech. It's not speech, apparently, so what is it?

16 A. Offensive verbal conduct, I would say. I
17 never -- never thought about that, but it's offensive.

18 Q. So verbal conduct is offensive speech?

19 A. Uh-huh.

20 Q. So by uh-huh, you mean yes?

21 A. Yes, I would guess.

22 Q. I'm not trying to harass you. It's just that for
23 the purpose of the record, we have to have a clear answer.

24 A. I know. I know, and I try to correct myself

Carmen Borges

Page 52

1 with -- that is just habit.

2 Q. And I do it, too. And you know, if you wanna
3 jump in and tell me and slap me upside the head. And --

4 A. The verbal speech.

5 Q. See in the first line, it says behavior
6 consisting of physical or verbal conduct? It's the first
7 cause in the definition of harassment. Do you see that?

8 A. Behavior consisting of verbal conduct,
9 including -- well, that is sufficiently severe, pervasive
10 that it substantially interferes. I mean, there's the
11 definition, if it's an offensive something that
12 interferes.

13 Q. You're talking about speech, right?

14 A. Physical or verbal, yeah, conduct.

15 Q. Okay. And the only difference between verbal
16 conduct and any kind of other speech is verbal conduct
17 that's offensive falls under this harassment policy?

18 A. It could.

19 Q. Does this policy anywhere define non-legal
20 harassment?

21 MR. SMITH: Objection to form.

22 THE WITNESS: Non-legal harassment? What would
23 that be? Tell me what's non-legal harassment.

24 BY MR. ALLEN:

Carmen Borges

Page 53

1 Q. Well, I don't know. I'm just going off the
2 things we've read in the documents provided by Penn State
3 University.

4 A. As opposed to legal harassment?

5 Q. Correct.

6 A. It's misbehavior.

7 Q. Is that defined in this policy, this kind of
8 misbehavior?

9 MR. SMITH: Objection to form.

10 THE WITNESS: Whether the alleged conduct
11 constitute prohibited harassment depends on the totality
12 of the particular circumstances, including the nature,
13 frequency and duration of the conduct. So I think that
14 would explain, you know, one comment, one situation. But
15 a continuation which falls into the harassment category,
16 continuation of offensive attacks or physical attacks or
17 written statements.

18 BY MR. ALLEN:

19 Q. So let me rephrase my question. Can you
20 distinguish in this policy harassment that rises to the
21 level of legal harassment from harassment that doesn't
22 rise to the level of legal harassment?

23 MR. SMITH: Objection to form.

24 BY MR. ALLEN:

Farrell Court Reporting

Carmen Borges

Page 54

1 Q. That's just a yes or no question. So if you can
2 give me yes or no, then we can go from there.

3 A. Yes.

4 Q. Thank you. And could you then explain the
5 difference between harassment that rises to the level of
6 legal harassment and harassment that is not rising to the
7 legal definition of harassment as explained in this policy
8 and as someone who is responsible for enforcing this
9 policy?

10 A. It's a continuation.

11 MR. SMITH: Objection to form.

12 THE WITNESS: A continuation of the behavior.
13 One incident, two incident, but the continuation, the
14 pattern of the behavior or the nature of continuing is
15 what makes it harassment.

16 BY MR. ALLEN:

17 Q. Do you know of anywhere in this policy where it
18 defines disruptive behavior?

19 A. Not in this policy. In the code of conduct
20 for -- you know, for the university, there is.

21 Q. Which code of conduct are you referring to?

22 A. The values, the Penn State values.

23 Q. So when you say code of conduct, you --

24 A. No, no. I meant -- I meant the values. Sorry.

Farrell Court Reporting

Carmen Borges

Page 55

1 Q. That's -- all I was gonna say is when you say
2 code of conduct, you're using that interchangeably with
3 the values of Penn State University?

4 A. (Indicating.)

5 Q. Okay.

6 A. Those are the expectations for behavior. Those
7 are the value of the institution.

8 Q. Okay. Similarly does this policy define
9 aggressive behavior?

10 A. It would have to be defined by the action, by the
11 situation in particular. Yeah.

12 Q. Does this policy define unprofessionalism?

13 A. No, I don't think so.

14 Q. But from Exhibit No. 4, which was the
15 professional ethics policy, we know that colleagues are
16 obligated to respect and defend the free inquiry of their
17 associates, right?

18 A. Right.

19 Q. That is professional behavior?

20 A. Yes.

21 Q. And asking critical questions in a workshop?

22 A. Yes, in a respectful manner.

23 Q. Exchanging criticism is professional conduct,
24 right?

Farrell Court Reporting

Carmen Borges

Page 56

1 MR. SMITH: Objection to form.

2 THE WITNESS: It is.

3 BY MR. ALLEN:

4 Q. Is running behind the back of your colleagues to
5 submit anonymous complaints professional behavior?

6 MR. SMITH: Objection to form.

7 THE WITNESS: Running behind your -- well, if
8 you're gonna submit a complaint, you don't have to -- you
9 don't have to inform anybody.

10 BY MR. ALLEN:

11 Q. Do you consider that professional behavior for a
12 grown faculty member?

13 MR. SMITH: Objection to form.

14 THE WITNESS: To file a complaint?

15 BY MR. ALLEN:

16 Q. Yes.

17 A. Yeah. That's not -- that's separate. That is a
18 total separate issue.

19 Q. And in the meantime, that's been encouraged at
20 Penn State, correct?

21 MR. SMITH: Objection to form.

22 THE WITNESS: Yes.

23 BY MR. ALLEN:

24 Q. Is this policy -- I'm going back to Exhibit 5, AD

Carmen Borges

Page 57

1 91 policy. Does this policy define microaggressions?

2 A. No.

3 Q. What is a microaggression, if you know?

4 A. It's -- microaggression is an offensive action or
5 an offensive statement towards -- towards somebody.

6 Q. So it's an offensive action or offensive
7 statement that would include this thing we've been talking
8 about before called verbal conduct?

9 A. It could be verbal.

10 Q. So if someone feels something is offensive, that
11 makes it a microaggression?

12 A. Yeah, I would say so.

13 Q. And is it part of your job as the affirmative
14 action office associate director to investigate
15 microaggressions?

16 A. If it's a consistent pattern, if it's something
17 consistent, it would -- it would -- it would not just be
18 one microaggression. It would just be more harassment.
19 It has to be more than that's the one incident.

20 Q. That was not my question. My question was was it
21 your job as associate director of the affirmative action
22 office to investigate microaggressions?

23 A. Not microaggressions, per se. No, not like that.
24 But a pattern of microaggressions that -- probably, yes.

Farrell Court Reporting

Carmen Borges

Page 58

1 Q. How many complaints did you receive about
2 microaggressions in 2020 to 2022?

3 A. What, the word micro -- alleging a
4 microaggression?

5 Q. Yes.

6 A. No.

7 Q. You didn't get any?

8 A. Not -- not -- not defining that in those terms.

9 Q. What terms are you referring to?

10 A. Microaggression. If you say you want a
11 microaggression, if it's an offensive comment or an attack
12 on somebody's -- see, we're talking the definitions here.

13 Q. Right.

14 A. So exactly. What's a microaggression, you know?
15 That's -- if something's said purposefully, it's openly
16 implied that could be offensive to someone else, yeah,
17 that -- is it a pattern? Does it -- does that become a
18 pattern? Then it -- it gets into more of the policy.

19 Q. I think you would agree that a microaggression as
20 defined in these terms that you've been using this
21 morning, it's something less than an overt act of
22 aggression, correct? Otherwise, it wouldn't be micro,
23 would it?

24 MR. SMITH: Objection to form.

Carmen Borges

Page 59

1 THE WITNESS: Yeah. It's -- it's -- yeah.

2 Microaggression, it would be something -- I mean,
3 people -- I'm saying one time or something and somebody,
4 you know, will -- that's -- that's a different thing than
5 that, then, than a consistent pattern.

6 BY MR. ALLEN:

7 Q. In your earlier testimony with regard to Exhibit
8 5, which is the AD 91 policy, you emphasized that to be
9 harassment, something would have to be severe or pervasive
10 such that it substantively interferes with an individual's
11 employment, education or access to university programs,
12 correct?

13 A. That's what the policy says.

14 Q. So by their very definition, could
15 microaggressions ever be severe?

16 MR. SMITH: Objection to form.

17 THE WITNESS: They could.

18 BY MR. ALLEN:

19 Q. Please explain how a microaggression could be
20 severe.

21 MR. SMITH: Objection to form.

22 THE WITNESS: If your -- if your behavior -- that
23 goes into behavior. If your behavior is consistently --
24 consistently attacking or putting down a person or saying

Carmen Borges

Page 60

1 things that could be offensive to the person, that -- that
2 could be severe.

3 BY MR. ALLEN:

4 Q. Aren't you describing something that's
5 persistent? That's a separate definition here,
6 persistent. Aren't you describing -- or pervasive, excuse
7 me.

8 A. Pervasive.

9 Q. Aren't you describing something that's pervasive,
10 not severe?

11 MR. SMITH: Objection to form.

12 THE WITNESS: Well, both. If they're pervasive
13 or severe, pervasive or severe, yeah, severe or pervasive.

14 BY MR. ALLEN:

15 Q. So.

16 A. Sufficiently, that is sufficiently severe or
17 pervasive. So a microaggression would probably not fall
18 in that category of sufficiently severe or pervasive.

19 Q. Okay. You have any experience in the -- as long
20 as you've worked there, do you have any experience in the
21 affirmative action office of investigating
22 microaggressions that rose to the level of severe?

23 A. Not described as microaggression, no. I mean,
24 behavior. We look at the behavior. You know, it depends

Carmen Borges

Page 61

1 on what the behavior. It's not -- it's not that -- you
2 know. Because if it says microaggression, then you have
3 to figure out what are the examples of the
4 microaggression. What are the behaviors?

5 Q. In your experience as an officer of the
6 affirmative action office at Penn State, have you ever
7 investigated accusations of microaggressions that were
8 found to be so pervasive that they constituted harassment?

9 A. There could be. That could have been a scenario.

10 Q. That's not what I asked.

11 A. Uh-huh.

12 Q. I asked in your experience, did you ever --

13 A. Well --

14 Q. -- investigate such a complaint and you found
15 microaggressions to be pervasive such that they formed a
16 pattern of harassment?

17 A. Not described as microaggression, described a
18 conduct.

19 Q. So in other words, there was conduct that wasn't
20 described as microaggressions that might have formed the
21 basis for a harassment complaint, correct?

22 A. Uh-huh. Correct.

23 Q. And you've had plenty of those?

24 A. Uh-huh.

Farrell Court Reporting

Carmen Borges

Page 62

1 Q. But you have not had any complaints of
2 microaggressions that were so pervasive that you found
3 that they constituted harassment?

4 A. Not using the word microaggression, no.

5 Q. Did you define complaints as complaints about
6 microaggression in your office?

7 A. No.

8 MR. ALLEN: Let's go off the record, please.

9 (A discussion was held off the record.)

10 BY MR. ALLEN:

11 Q. So at some point did you get a complaint -- let
12 me back up and strike that question.

13 In March of 2020, do you recall getting a
14 complaint from Liliana Naydan?

15 A. March 2020?

16 Q. Correct.

17 A. I know this. Yes.

18 Q. How did you determine that it was from Liliana
19 Naydan?

20 A. She -- she sent me the --

21 Q. So you knew that she had submitted it?

22 A. She submitted it. I'm not -- she did -- she
23 didn't identify who she was complaining about.

24 Q. I see. So it was anonymous to the extent that

Farrell Court Reporting

Carmen Borges

Page 63

1 she didn't identify --

2 A. Exactly, but she identify herself.

3 Q. Let me finish. It was anonymous to the extent
4 that she didn't identify what I'll call the respondent,
5 right?

6 A. Exactly.

7 Q. The person she was accusing?

8 A. Uh-huh.

9 Q. What was the nature of that complaint?

10 A. She had a list of thing, a list of items, a lot
11 of examples about a faculty member in her unit that was
12 undermining her authority, was -- was undermining her --
13 yeah. Basically, that was -- all the example she gave was
14 about not -- not respecting her -- her authority.

15 Q. You remember any of the specific examples?

16 A. Well, you probably have it, don't you? I mean,
17 it's a long list. She had -- I remember it's about two
18 pages of her examples that she -- yeah.

19 Q. And --

20 A. Or even more. Or even more, even two or three
21 pages. Very detailed.

22 Q. But I'm just asking you based on your --

23 A. Uh-huh.

24 Q. -- preparation for this deposition and what you

Carmen Borges

Page 64

1 remember now, do you remember any of the specific
2 allegations made by Liliana Naydan in March of 2020?

3 A. Other than this faculty member and her under
4 her -- not under her supervision because she was the --
5 she's more -- she was the coordinator, but under her
6 directions was -- was undermining her and was not -- you
7 know.

8 Q. And do you know how specifically he was
9 undermining Liliana Naydan, this anonymous --

10 A. Bypassing her, making decisions on his own,
11 challenging, kind of confronting her with some challenges.

12 Q. Like what?

13 A. Definitions of things.

14 Q. In terms of what?

15 A. Yeah. I remember now specifically about SRTEs
16 for faculty. Those are the evaluations. Apparently,
17 there had been an article discussed that women and
18 minorities got lower student ratings and -- and then, that
19 was distributed, and this faculty member put her to the
20 challenge of what does that mean. What -- why are you
21 saying this and, you know.

22 Q. Is that unprofessional to ask for specifics like
23 that?

24 A. He was told to go do the research on the matter.

Farrell Court Reporting

Carmen Borges

Page 65

1 That's how that ended.

2 Q. What is an SS -- excuse me. You mentioned this
3 acronym SRTE.

4 A. It's --

5 Q. Can you define that for --

6 A. Those are student -- student evaluations of
7 teaching.

8 Q. Do you know what it stands for, the SRTE?

9 A. Student -- student, SR, T, teachers evaluations.
10 Student -- what would that be? Student?

11 Q. That's okay. We don't have to --

12 A. Yeah. Yeah.

13 Q. -- spend time on this. For the record --

14 A. It's interesting. I mean, you know, this is how
15 we get to use -- we use an acronyms that --

16 Q. So at one point, he questioned whether --

17 A. Maybe student report.

18 Q. So it could be support -- student report and
19 teacher evaluation?

20 A. Uh-huh.

21 Q. So one of the things that this -- the
22 complainant, Liliana Naydan, complained about was that
23 this individual, the respondent, questioned whether
24 minorities and women actually got lower SRTE evaluations

Carmen Borges

Page 66

1 than white men?

2 A. That was one -- one item. That was one of the
3 two pages of issues that he had been -- this person had
4 been challenging her on.

5 Q. I'm just trying to get what you remember.

6 A. Okay.

7 Q. And your memory is that that ended with him being
8 told to go look it up himself?

9 A. Yes.

10 Q. And was there any indication that the respondent
11 had asked that question in bad faith?

12 A. I can't answer that.

13 Q. Is it professional when someone asks a question
14 asking for data to tell them to go look it up themselves?

15 A. I don't know if it's professional or
16 unprofessional. I mean, that was the answer.

17 Q. So you really can't answer that question?

18 A. I mean, in the context of -- of -- as I remember,
19 it was a big article, you know, of the work and
20 everybody's so busy to really take time to -- to dissect
21 the article for the person that's questioning it.
22 That's -- that's how it kind of reads. This is what it
23 is. If -- you know, if you want more details or more
24 information, go check it out for yourself.

Farrell Court Reporting

Carmen Borges

Page 67

1 Q. I think you would agree that if a student body
2 was systematically reviewing teachers at Penn State
3 Abington and always giving, regardless of the quality of
4 the instruction, Black and female professors lower
5 teaching evaluations, that would probably be -- indicate a
6 problem, right?

7 A. Yes.

8 Q. Do you know of any evidence at Penn State
9 Abington that that's the case?

10 A. No.

11 Q. At Penn State in general?

12 A. No. There's a lot of research. There's a unit
13 of Penn State that has done research on that. The
14 Schriner Institute for Teaching and Learning, they took on
15 a big project to research that, but I'm not familiar with
16 their results.

17 Q. Wouldn't those results be important for your
18 office of affirmative action?

19 A. No.

20 Q. No? Okay. What did you do in response to
21 Liliana Naydan's report that an anonymous faculty member
22 had done these things?

23 A. Nothing. She didn't want anything done. She
24 just wanted it on file and documented. She didn't want

Carmen Borges

Page 68

1 anything done.

2 Q. Did you interview anyone?

3 A. No.

4 Q. Did you talk to anyone besides Liliana Naydan?

5 A. No.

6 Q. You didn't meet with Naydan?

7 A. It was a telephone call.

8 Q. It was a telephone call?

9 A. Uh-huh.

10 Q. If you remember -- I know this can be sometimes
11 hazy. Was Covid in effect then?

12 A. Yeah.

13 Q. It was March 2020.

14 A. March 2020, Covid was -- was coming on. Yes.

15 Q. That was the --

16 A. I can -- I -- I know.

17 Q. Okay. So after March of 2020, is it correct to
18 say that there were very few in person meetings ever until
19 Covid had passed, basically?

20 A. I think we went remote at that time around that
21 time. The whole university went remote.

22 Q. And after that, was it very rare to have in
23 person meetings as part of your work?

24 A. Well, in our office, they were rare. I don't

Carmen Borges

Page 69

1 know in other units how they were functioning.

2 Q. I'm just asking about you.

3 A. Yeah, we were remote.

4 Q. Did you speak to Liliana Naydan's supervisor?

5 A. Friederike, yes.

6 Q. Who is Liliana Naydan's supervisor?

7 A. Friederike. Friederike -- I can't recall.

8 Q. If I said Baer, would that --

9 A. Baer, Baer, Baer. Friederike Baer.

10 Q. B-A-E-R?

11 A. Uh-huh. Exactly.

12 Q. And I think her -- it's a German name, correct?

13 A. Yes.

14 Q. And her first name is F-R --

15 A. Friederike.

16 Q. -- E-D-R-I-E-C-K-E, right?

17 A. Yes.

18 Q. And if I've misspelled it, I think we'll be able

19 to correct that. But --

20 A. Uh-huh.

21 Q. -- it's an unusual spelling, so I wanted --

22 A. It is.

23 Q. -- to spell it for the reporter.

24 A. Oh, I see.

Farrell Court Reporting

Carmen Borges

Page 70

1 Q. And when you spoke to Friederike Baer, did you
2 make notes of that conversation?

3 A. I don't recall.

4 Q. Did you make notes of your conversation with
5 Lilliana Naydan?

6 A. If I did, I would have provided them. I don't
7 recall. I have to check.

8 Q. Please understand. Sometimes, we get handwritten
9 notes, and it's not clear whose they are, so I may ask you
10 about that. Obviously, if they're not your notes, you can
11 just say, right?

12 So while we're at it, can you explain what your
13 normal practice when you get -- practice when any
14 complaint comes in? How does it come in? Please explain
15 what you do.

16 A. As I said, because of the changes -- before,
17 people would first do, come in in person.

18 Q. Sure.

19 A. And we would sit down and get the facts and get
20 the information, then. Now, with people being able to
21 file online, they just submit their complaints, and so
22 they come to our office. They went to bias office. At
23 the beginning, it was pretty confusing. They were going
24 all over the place, and somebody was sorting out where

Carmen Borges

Page 71

1 they belong. And then, you know, if they ended in our
2 office, the ones that pertain to our office.

3 So all that change is happening with Covid, with
4 the remote. And, you know, things circulate. So, you
5 know, the first thing we do is try to make contact with
6 the person that filing the complaint to get more
7 information, get more details about what's happening and
8 then -- and go from there, determine from there what needs
9 to happen next.

10 Q. Do you share the specific complaints with the
11 respondents?

12 A. The specific allegations, yeah, we talk to the
13 respondent. We have to ask them about the allegation to
14 hear their side of the story.

15 Q. Do you give them the specific complaint that was
16 submitted against them?

17 A. No.

18 Q. Why?

19 A. It's private -- private -- private information
20 for our office. So we -- we share the allegations.

21 Q. But you consider the actual complaint in the
22 words of the complainant private information,
23 quote-unquote?

24 A. In our office, we do, yeah.

Farrell Court Reporting

Carmen Borges

Page 72

1 Q. In the course of your investigations, do you
2 gather evidence?

3 A. Well, we talk to the -- to the respondent and any
4 other witnesses that may be necessary to talk to.

5 Q. Is there other kinds of evidence you gather?

6 A. Depends on the situation, yeah. If -- if we need
7 some other evidence or the respondent wants to provide
8 something, yeah, they provide.

9 Q. What other evidence do you get from the
10 respondents or complainants?

11 A. Whatever they wanna provide.

12 Q. Such as what?

13 A. Something that would -- that would contradict or
14 that would explain what the allegations -- what the
15 allegation was about.

16 Q. Do you collect their e-mails?

17 A. The address.

18 Q. Does your office go in and pull faculty members'
19 e-mails from the Penn State University e-mail system?

20 A. If we have access to do it, yes.

21 Q. You do that without the faculty's permission?

22 A. Oh, we have access to a lot of information, yeah.
23 Data, information, personnel matters, yeah, we have access
24 to all that.

Farrell Court Reporting

Carmen Borges

Page 73

1 Q. So your answer is that in some investigations,
2 you would go into a faculty member's e-mail without their
3 permission to investigate what they were saying?

4 A. E-mail, you mean communication? Oh, no, no, no.

5 Q. Okay.

6 A. No, no, just the e-mail address.

7 Q. Okay.

8 A. I thought we were talking about the e-mail
9 address, but no. And the personnel appointments, when did
10 they start working, general things like that.

11 Q. Sure.

12 A. But no, we don't get into e-mails.

13 Q. I --

14 A. Private e-mails.

15 Q. You might collect documents from the parties?

16 A. If they provide them, yeah.

17 Q. And you rely upon the parties to provide them?

18 A. Uh-huh.

19 Q. Do you include any other things in investigating
20 besides what you get from the parties themselves?

21 A. Well, if they mention someone else that we should
22 talk to, someone else that has knowledge of the situation.

23 Q. What do you do with that?

24 A. We contact them to see what they know.

Farrell Court Reporting

Carmen Borges

Page 74

1 Q. Do you gather documents and other relevant
2 evidence from them, too?

3 A. If -- if it's relevant or appropriate, yeah.

4 Q. I believe earlier you made reference to something
5 called the bias office. Do you recall referring to a bias
6 office?

7 A. The bias complaints were going at the time into
8 educational equity office.

9 Q. So at the time meaning 2020 to 2022?

10 A. Before -- yeah. Around there, yeah.

11 Q. And you said there was an educational equity
12 office?

13 A. Office of educational equity, yeah.

14 Q. What was the relationship of the office of
15 educational equity to the affirmative action office in
16 which you work?

17 A. The office of educational equity was more focus
18 on students, and our office was -- is more focus on
19 employees.

20 Q. So bias complaints could be submitted by faculty,
21 right?

22 A. Yes.

23 Q. And it would still go to the office of
24 educational equity?

Carmen Borges

Page 75

1 A. Initially all bias complaints were going to the
2 office of educational equity initially. At some point
3 when Alina started, for whatever reason, it -- it began
4 to -- to -- they were not -- they were not handling all
5 the bias complaint, but they were sending them. If there
6 was an employee, if was an employee matter, they send them
7 to our office.

8 Q. And you refer to Alina. Is that Alina Wong?

9 A. Uh-huh.

10 Q. What was her position?

11 A. She was in the educational equity office.

12 Q. Was she the director of that office?

13 A. No.

14 Q. You know her --

15 A. System director or something.

16 Q. Who was the head of the office of educational
17 equity?

18 A. It's still Marcus Whitehurst.

19 Q. And Alina Wong worked under?

20 A. Under Marcus Whitehurst. And the whole concept
21 of bias reporting started as a student, for students. And
22 then, they were addressed by them also. They were
23 addressed by that office, mostly a student complaining
24 about a faculty or something. But then, they were

Carmen Borges

Page 76

1 addressed. At some point, the bias expanded and everybody
2 got confused or everybody then had options too, but -- and
3 then, they began to file there, too. And then it was like
4 okay, so the ones that are employee related, we send them
5 to affirmative action. The ones that are student related,
6 we address them.

7 Q. So let's talk about the time period. When did
8 this whole bias reporting thing begin? You said at the
9 beginning, so I'm just trying to loosely let's do -- put
10 down some markers of when that was.

11 A. Exactly. It would have been before Covid, before
12 '20.

13 Q. So before my client was hired by Penn State
14 University, which was I believe he started in 2019?

15 A. 2019?

16 Q. In the fall of 2019.

17 A. The bias --

18 MR. SMITH: I wanna say 2018. I don't wanna --

19 BY MR. ALLEN:

20 Q. I'm sorry. So it appears my client started in
21 2018.

22 A. 2018.

23 Q. Yeah.

24 A. 2018, yeah.

Farrell Court Reporting

Carmen Borges

Page 77

1 Q. You think the bias report started before Covid?

2 A. Yeah. The bias for students were before 2018.

3 After 2018 or '19, then it kind of began to go to our
4 office.

5 Q. So let me try to summarize, and I'm not trying to
6 put words in your mouth. Shortly before Covid, there was
7 this reorganization of the process where there was --
8 someone was making a decision about whether it should be
9 sent to your office, it stays among the students in the
10 office of educational equity and so forth, right?

11 A. Yeah.

12 Q. Basically a sorting thing?

13 A. Sorting.

14 Q. Who was responsible for that?

15 A. Alina, I believe.

16 Q. That was Alina Wong?

17 A. I believe. And to complicate matters, then there
18 was the hotline created also.

19 Q. There was a hotline for bias reporting?

20 A. For any reason of anything. So that became a
21 whole, huge thing about lots of complaints of all kinds.
22 And so then, the -- the hotline was also trying to
23 coordinate how do we sort this out. So some were sent to
24 our office, others to the unit. It was a period of -- of

Farrell Court Reporting

Carmen Borges

Page 78

1 a lot of confusion about providing people lots of venues
2 to file complaints. And believe me, people were using
3 them. All -- all and each one of them, so it -- it -- we
4 got flooded with -- with -- with lot of issues.

5 Q. So it's safe to say that this caused an explosion
6 of complaints?

7 A. It caused an explosion of complaints. Major,
8 minor, nonsense, whatever, anonymous, all kinds of things.
9 And then, there was where does this belong, how is this
10 sorted out, where does it go. It -- it -- it was -- it's
11 getting better now. Things are balancing out and better
12 defined, but it was a period of -- and on top of that, it
13 was Covid and working remotely. There was -- there was a
14 lot of confusion around all that.

15 Q. So even though people weren't actually in face to
16 face contact, they were still flooding your offices with
17 complaints?

18 A. Even more easier than making an appointment and
19 go in person, and that -- that was the difference. You
20 know, before if you had to file a complaint, you make an
21 appointment and you meet with someone. We, you know, got
22 all the facts and you did it on your own. But after that,
23 now it is -- it was also encouraged for people that knew
24 about issues to -- third parties or witnesses could file

Carmen Borges

Page 79

1 also.

2 Q. So a third party who wasn't even involved in the
3 conduct could file a complaint about someone?

4 A. Exactly. So that's the picture of how -- how --
5 how -- how, you know, confusing it was and how many
6 complaints we're handling and the need to establish
7 processes and systems. It became very clear. Our office
8 was very short staffed. It was -- yeah. It was -- it was
9 challenging times.

10 Q. And the administration expanded to accommodate
11 all of these complaints?

12 A. What administration? Our office?

13 Q. Penn State's administration, your office. You've
14 already mentioned two offices. It sounds like there was a
15 hotline office?

16 A. The hotline office, yeah, hotline. Ethics and
17 compliance it's called, that one. Ethics and compliance,
18 bias reporting and our office, yes.

19 Q. So was there an expansion in these offices to
20 meet the demand for processing all of these complaints?

21 A. Can you --

22 Q. Did these offices expand to cope with this
23 increase?

24 A. Not -- gradually. Gradually, it has, but not

Carmen Borges

Page 80

1 immediately.

2 Q. And ultimately, the taxpayers of Pennsylvania are
3 paying for that?

4 MR. SMITH: Objection to form.

5 THE WITNESS: We're being stretched. We're doing
6 more than -- we could use more people, but it hasn't.
7 Positions have not been filled.

8 BY MR. ALLEN:

9 Q. And this is the last question I'll ask about that
10 before we get into some of the specifics of the March
11 complaint. Has this whole process -- you said it flooded
12 your office, correct? Let's just talk about your office.
13 It flooded your office with new complaints?

14 A. Uh-huh.

15 Q. Did you get an increased volume of complaints
16 that you considered meritorious?

17 A. I think about, yeah. Maybe. I don't know.
18 Yeah, maybe. I'll answer maybe.

19 Q. But it doesn't stand out in your mind that this
20 suddenly flushed out real --

21 A. Well, they all take time. I mean, they all --
22 you need to sort it out. You need to figure it out. You
23 need to follow up on some things. All the -- it's time
24 consuming.

Farrell Court Reporting

Carmen Borges

Page 81

1 That particular complaint that you're talking
2 about was never -- nothing was done with that because it
3 was anonymous.

4 Q. I don't need to --

5 A. It was anonymous, and it was just put aside.

6 Q. I don't want to interrupt you. I know I am, but
7 I just think we'll move on a little faster because we'll
8 have plenty of time to talk about that.

9 I think the answer to this question should be
10 clear, though. This massive increase in reporting did
11 lead to a vast increase in frivolous complaints?

12 A. I would think so, yes.

13 Q. And you're not -- you're very certain about that,
14 correct?

15 A. Well, you know, we take every -- we should -- we
16 should -- I mean, we are expected to take every complaint
17 seriously and sort it out until it's figured out, yeah.
18 But the volume was high, yeah.

19 Q. So you're certain about that? Just answer my
20 question.

21 A. Certain?

22 Q. You're certain that it increased the number of
23 frivolous complaints?

24 A. Why do you talk frivolous? What's a frivolous?

Farrell Court Reporting

Carmen Borges

Page 82

1 What's that mean?

2 Q. I believe you used the word silly or some word
3 like that when you testified earlier. Complaints that
4 they're really not merit based.

5 A. Well, you really don't know until you look into
6 it, you know.

7 Q. Well, you know once you've looked into it, don't
8 you?

9 A. Exactly. Once you looked into it, then it's
10 clarification of issues or mediate a solutions. It's not
11 as complex as an investigation.

12 Q. So my question is really a simple one. You're
13 certain that this increase in reporting led to an increase
14 in frivolous complaints?

15 MR. SMITH: Objection to form.

16 THE WITNESS: No, I -- I -- I didn't say that and
17 I -- I can't say that because we need to look at a
18 complaint before considering that it had no merit, so --

19 BY MR. ALLEN:

20 Q. Well, once you look at it, did you find that
21 many, many more had no merit than before?

22 A. For the complainant, they had merit. So you had
23 to -- you know, you had to find -- find a mediated
24 explanation or resolution to something.

Carmen Borges

Page 83

1 Q. So did you see your job as validating the
2 feelings of complainants?

3 A. Not validating the feelings, but taking the
4 complaint seriously until proven differently.

5 Q. In your entire time in the office of affirmative
6 action, did you ever tell a complainant that their
7 complaint had no merit?

8 A. In those words, no.

9 MR. ALLEN: Let's go off the record, please.

10 (A break was held.)

11 (Exhibit Borges 6 was marked for identification.)

12 BY MR. ALLEN:

13 Q. Ms. Borges, I've premarked an Exhibit No. 6 for
14 the record that starts with PSU 02658 as a Bates number
15 and has a caption at the top list of key issues since
16 March 2020 and in parenthesis in chronological order,
17 close parenthesis.

18 Is this the document we were discussing before, a
19 complaint about someone whose name was not disclosed at
20 this time in March 2020?

21 A. Yes, it is.

22 Q. And you see that this individual -- so first of
23 all, I think you testified earlier that this complaint was
24 submitted by Liliana Naydan, right?

Farrell Court Reporting

Carmen Borges

Page 84

1 A. Yes.

2 Q. And in the first line, Professor Naydan says
3 there have been many incidents, all microaggressions,
4 right?

5 A. Yes, I see.

6 Q. And she claims that this has created a, quote,
7 hostile working environment for her and a potentially
8 hostile learning environment for students, correct?

9 A. That's what it says.

10 Q. Are you -- do you have any knowledge about how
11 microaggressions experienced by Professor Naydan can
12 somehow create a hostile learning environment for
13 students?

14 MR. SMITH: Objection to form.

15 THE WITNESS: I think she explains things here,
16 so that should be here. I think that pertained to an
17 incident that advising a student.

18 BY MR. ALLEN:

19 Q. So there was only one incident, advising a
20 student, that you know of?

21 A. According to this that I remember, there was one
22 incident that -- yeah.

23 Q. Did you find evidence that the respondent
24 committed a, quote, microaggression against this student?

Carmen Borges

Page 85

1 A. I mean, I wouldn't call it a microaggression. It
2 was, um -- I don't think she labeled that one
3 microaggression. She labeled it him bypassing her -- her
4 authority or dealing with a student or including the
5 students in e-mails that the student should not have been
6 included in e-mails between the two of them.

7 Q. Did including the students in e-mails somehow
8 detract from their learning experience, the students'
9 learning --

10 A. No.

11 Q. -- experience?

12 A. No, it does. It's -- it's just not professional.

13 Q. So there's no situation where professors at Penn
14 State include each other and students in e-mails?

15 A. Unless the student has a need to know the
16 decision.

17 Q. It's talking about advisor, right? Students need
18 to know that information, right?

19 A. Probably, yes.

20 Q. And you said you don't recall that one being
21 described as a microaggression?

22 A. No. I think she described that as disrespectful
23 or bypassing her authority or not including her as the
24 coordinator of the program and the advisor.

Carmen Borges

Page 86

1 Q. And that's discussed in this complaint, correct?

2 A. I think so. As I remember when I read it, yes.

3 Q. So in the first sentence, she says these are all
4 microaggressions, right? These have been -- there have
5 been many incidents, all microaggressions, right? Those
6 are her words?

7 A. Those are her words, yes.

8 Q. And she submitted this to your office, right?

9 A. Yes.

10 Q. Okay. If you go down to number two, number one
11 is blanked out. That might be something that was about a
12 student. We don't know. Do you have any memory of what
13 was in that blanked out --

14 A. I was gonna ask you. Why is that blanked out?

15 Q. You'll have to ask your attorney. That was
16 blanked out by Penn State under a claim that it protects
17 FERPA information. At least that's the understanding, and
18 your counsel can correct that, but we're gonna skip
19 that --

20 A. Maybe it has the name of a student there.

21 Q. Something of that nature?

22 A. Uh-huh.

23 Q. Then under number two, if you skip to the fourth
24 sentence, you see where it says this faculty member? It

Carmen Borges

Page 87

1 says this faculty members questioned our feelings and
2 remarks in an e-mail saying that feels like a stretch to
3 me, no, question mark. Did I read that correctly?

4 A. Uh-huh.

5 Q. And it was something about a statement that women
6 and faculty of color expressed that they felt worried
7 about enforcing mask wearing --

8 A. Uh-huh.

9 Q. -- right? Does that constitute a microaggression
10 to you, as an office who enforces the policies of Penn
11 State?

12 A. It did to her. I --

13 Q. It's potentially against the rules of Penn State
14 to question somebody's feelings?

15 MR. SMITH: Objection to form.

16 BY MR. ALLEN:

17 Q. That's what it says here, right. This faculty
18 member questioned our feelings. Did I read that wrong?

19 A. No.

20 Q. Do you know of any reason why that would be
21 objectable to read it that way?

22 A. That's what it says. That's her interpretation
23 of feelings and remarks.

24 Q. And is that a violation of the rules of Penn

Carmen Borges

Page 88

1 State to question other people's feelings?

2 MR. SMITH: Objection to form.

3 THE WITNESS: It's not against the rules.

4 BY MR. ALLEN:

5 Q. It also -- if you skip down another two
6 sentences, do you see where it says implicitly in bold?

7 A. Uh-huh.

8 Q. Liliana Naydan complains that he implicitly
9 critiqued the article she sent as anecdotal and not
10 empirical and asked for an article rooted in empirical
11 evidence. Did I read that correct?

12 A. Uh-huh.

13 Q. Do you know what the substance of this, quote,
14 implicit critique was?

15 A. No.

16 Q. That means it was implied, right?

17 A. Uh-huh.

18 Q. In other words, it wasn't overt, right? Is that
19 a -- is that a violation of the rules of Penn State to say
20 something that might be interpreted as implying a
21 critique? Is that -- does that violate the rules in some
22 way?

23 MR. SMITH: Objection to form.

24 THE WITNESS: Not that -- that in and of itself,

Carmen Borges

Page 89

1 you know. No. And again, it's a pattern. It's the
2 pattern of things. It's not one or two incidents.

3 BY MR. ALLEN:

4 Q. Can there be a pattern of someone interpreting
5 insults where none exist? That can be a pattern, too,
6 right?

7 A. Of the receiver.

8 Q. Can a complainant have a pattern of submitting
9 bogus complaints?

10 MR. SMITH: Object to form.

11 THE WITNESS: No because it's how she felt. It's
12 how -- what she experienced.

13 BY MR. ALLEN:

14 Q. So what she feels and experienced can't be
15 criticized, right?

16 MR. SMITH: Objection to form.

17 THE WITNESS: I don't know what to say.

18 BY MR. ALLEN:

19 Q. Did you ever tell Liliana Naydan that she might
20 grow up and not be so offended by some of these things?

21 MR. SMITH: Objection to form.

22 THE WITNESS: No, I never did. I never addressed
23 this, I have to say. This was never addressed
24 specifically because --

Carmen Borges

Page 90

1 BY MR. ALLEN:

2 Q. You never addressed this complaint?

3 A. It was anonymous. She never had -- we never had
4 permission to address this complaint.

5 Q. Did you ever learn that this complaint referred
6 to my client, Zack Di Piero?

7 A. I learn much later.

8 Q. And we'll get -- I believe you testified earlier
9 that Lilitana Naydan is a faculty member, right?

10 A. Yes.

11 Q. And she's a grown woman, right?

12 A. Yes.

13 Q. And she's a scholar, correct?

14 A. Yes.

15 Q. And she's complaining that she finds it to be a,
16 quote, microaggression if someone implicitly critiques
17 her?

18 MR. SMITH: Objection to form.

19 THE WITNESS: That's what she says.

20 BY MR. ALLEN:

21 Q. Do you know if she ever discussed this with Zack
22 Di Piero directly?

23 A. I don't know.

24 Q. You see in number three, it says she's

Carmen Borges

Page 91

1 complaining that it's a microaggression, remember, in the
2 last sentence that he also called the scholarship of a
3 very famous scholar of color in our field unoriginal,
4 derivative in a meeting through, though not with that
5 word. Do you see that?

6 A. Uh-huh.

7 Q. Is that against the rules of Penn State?

8 A. What, calling -- what's it calling?

9 Q. Calling a very famous scholar of color in our
10 field unoriginal and derivative. You ever heard of
11 scholars calling each other unoriginal and derivative?

12 A. It could happen. I mean, people have different
13 opinions of things.

14 Q. Don't you think academics do that all the time?

15 A. All the time.

16 Q. You said you were married to an academic, right?

17 A. Yeah.

18 Q. Have you ever heard him complain that other
19 scholars' work was unoriginal?

20 A. I can't think of a situation, but it's nothing --

21 Q. I should strike that question because it invades
22 the spousal privilege, so I'll withdraw it. But you've
23 certainly heard scholars in your house complain about
24 other scholars work, right.

Carmen Borges

Page 92

1 A. Oh, yes.

2 Q. As unoriginal?

3 A. They -- they believe that it's unoriginal.

4 Q. But apparently to Professor Naydan, this is a
5 microaggression, right? That's what she wrote in here,
6 right?

7 A. Yes.

8 Q. Did anyone ever tell her to your knowledge that
9 that was the normal function of scholars to complain about
10 other people's work and do original work instead?

11 A. I don't know if her supervisor told her that, if
12 Friederike told her that.

13 Q. Do you think she should be told that?

14 A. That could be a conversation with -- with her
15 supervisor, her higher up or the department head. Yeah.

16 Q. So look at number five, too. This is another
17 thing which Professor Naydan apparently considers a
18 microaggression. This faculty, meaning Zack De Piero,
19 once mentioned in an e-mail to me that he was, quote, not
20 intending any of this to be disrespectful or me giving you
21 a microaggression or anything like that. Did I read that
22 correctly?

23 A. Yes.

24 Q. Then it goes on. Zack De Piero apparently also

Carmen Borges

Page 93

1 wrote in this e-mail I'm just trying to explain myself
2 plus talk through ideas. Did you see that?

3 A. Uh-huh.

4 Q. Now, according to Exhibit No. 4, which was the
5 professional ethics of policy of Penn State University,
6 that's supposed to be one of the jobs that academics have,
7 right? But Liliana Naydan is complaining that that, too,
8 is a microaggression, right?

9 A. Yes.

10 MR. SMITH: Objection to form.

11 BY MR. ALLEN:

12 Q. Even when the faculty member says he's not
13 intending to create whatever that means, a
14 microaggression, right?

15 A. Right.

16 Q. Another thing that I wanted to ask you about is
17 in number six. She says I feel like he -- this is the
18 sentence that begins in the third line of bullet point
19 number six or whatever you wanna say. I feel like he
20 copies one white male advisor because he feels I won't
21 know the answer to his questions -- question or wants
22 someone to oversee my answer to him. No other faculty
23 member in English ever copies this white male advisor when
24 e-mailing me with advising questions. Did I read that

Farrell Court Reporting

Carmen Borges

Page 94

1 correctly?

2 A. Yes.

3 Q. Why do you think she's pointing out that the male
4 advisor is white?

5 MR. SMITH: Objection to form.

6 THE WITNESS: You'd have to ask her that.

7 BY MR. ALLEN:

8 Q. Why would a complainant point out that the
9 advisor was male?

10 MR. SMITH: Objection to form.

11 THE WITNESS: You'd have to ask her.

12 BY MR. ALLEN:

13 Q. Is it a microaggression at Penn State University
14 to copy e-mails to white male faculty?

15 A. Is it what?

16 Q. A microaggression.

17 MR. SMITH: Objection to form.

18 BY MR. ALLEN:

19 Q. Is it against the rules --

20 THE REPORTER: I'm sorry. I didn't hear the
21 answer.

22 THE WITNESS: No.

23 MR. ALLEN: The witness answered no.

24 BY MR. ALLEN:

Farrell Court Reporting

Carmen Borges

Page 95

1 Q. Is it against any rule at Penn State that you
2 know of to copy a white male faculty member on anything?

3 A. There's no rule on that.

4 Q. It seems to be very important to Professor
5 Lilliana Naydan, however, isn't it? Doesn't it?

6 A. It seems so based on what she's saying.

7 Q. She goes out of her way to point out that this
8 individual was a white male advisor twice, correct?

9 A. Correct.

10 Q. Incidentally, is there any policy at Penn State
11 against referring to people by their last names?

12 A. No.

13 Q. By their first names?

14 A. No.

15 Q. So that isn't based on your knowledge and
16 experience a microaggression, is it?

17 MR. SMITH: Objection to form.

18 THE WITNESS: No.

19 BY MR. ALLEN:

20 Q. You nevertheless answered no? I just didn't --

21 A. No.

22 Q. Were you ever aware of anything that my client,
23 Zack De Piero, did to put, quote, even more service labor,
24 close quote, on Lilliana Naydan?

Carmen Borges

Page 96

1 A. I wouldn't know that. Friederike would -- would
2 know that.

3 Q. Just if you move down to the bottom of page 2661,
4 PSU 2661, the second paragraph up from the bottom,
5 Professor Naydan is discussing a student who is apparently
6 seeking an advisor. Do you see that paragraph that begins
7 this faculty member never replied? And if you skip to the
8 last two sentences that begin the faculty member showed
9 up, do you see that sentence?

10 A. Uh-huh. Faculty --

11 Q. I'm just gonna --

12 A. Yeah.

13 Q. -- read it into the record.

14 A. Go ahead.

15 Q. The faculty member showed up to the advising
16 meeting the next day and didn't discuss the student's
17 advising choice, so that was good in my view. In my view,
18 the three of us had a very awkward advising meeting in
19 which this faculty member provided misinformation in
20 assertive ways about World Campus courses, minors and
21 internships. Did I read that correctly?

22 A. Yes.

23 Q. So it seems that she says it was good. But then
24 she finds it some sort of microaggression, nonetheless,

Farrell Court Reporting

Carmen Borges

Page 97

1 right?

2 MR. SMITH: Objection to form.

3 THE WITNESS: Oh, you're waiting for my answer?

4 That's what she's saying.

5 BY MR. ALLEN:

6 Q. Okay. Did you ever identify any misinformation
7 provided by my client to advisees?

8 A. No.

9 Q. In the next paragraph, it flows over onto the
10 next page. Do you see that? I'm just gonna read the top
11 sentence on the page. It says I, meaning Liliana Naydan,
12 also felt that another part of the problem is that as a
13 chair and coordinator, I address issues involving
14 diversity, equity and inclusion. He seems to -- he seems
15 hostile to my doing that. Did I read that correctly?

16 A. Yes.

17 Q. Do you have any reason to believe Liliana Naydan
18 was lying about that?

19 A. I don't know. I mean --

20 Q. You have --

21 A. No knowledge.

22 Q. Okay. So you don't -- you believe she's
23 correctly representing as chair and coordinator, she
24 addressed issues involving diversity, equity and inclusion

Carmen Borges

Page 98

1 as a Penn State program director?

2 MR. SMITH: Objection to form.

3 THE WITNESS: That's what she says.

4 BY MR. ALLEN:

5 Q. Is it against the rules of Penn State University
6 to disagree with the diversity, equity and inclusion
7 initiatives of a chair and coordinator?

8 A. No.

9 Q. Is it unprofessional to disagree with a chair and
10 coordinator's diversity, equity and inclusion program?

11 A. No.

12 MR. ALLEN: I'm gonna mark Exhibit 7 as some
13 handwritten notes.

14 (Exhibit Borges 7 was marked for identification.)

15 MR. ALLEN: Bates marked PSU 4123.

16 BY MR. ALLEN:

17 Q. I guess the first question is is this your notes?

18 A. Yes.

19 Q. It is? So this is in your handwriting?

20 A. Yes.

21 Q. Okay. When did you take these notes?

22 A. Well, it says there March 31st, '21.

23 Q. And is this after a Zoom meeting with Liliana
24 Naydan?

Carmen Borges

Page 99

1 A. That's what it says, meeting at Zoom.

2 Q. What does DAA stand for? See there on the third
3 line?

4 A. Diversity and inclusion, I guess. Yeah. I
5 didn't get that right.

6 Q. So that was like --

7 A. Oh, no, no, no. This is the director of academic
8 affairs. That's Friederike's title.

9 Q. Friederike Baer at that time was the director of
10 academic affairs?

11 A. Exactly. Uh-huh.

12 Q. Did she have another position at Penn State
13 Abington as well?

14 A. She's also a faculty member there.

15 Q. It also says division head Abington. What does
16 that refer to?

17 A. Department.

18 Q. What was -- what was her department?

19 A. I mean, the writing program would have been under
20 her department. Uh-huh.

21 Q. English department too, right?

22 A. English. Exactly.

23 Q. Okay. And you say maybe gender bias and/or
24 racial bias going on for about a year, right?

Farrell Court Reporting

Carmen Borges

Page 100

1 A. That's what she consulted about. Uh-huh.

2 Q. What in the complaint about an anonymous
3 professor that we just read constitutes gender bias even
4 if you took everything in there alleged as true?

5 A. It's disagreement and -- between two faculty or
6 disagreeing. That's the issue that I thought Friederike
7 could -- would address or could discuss with both of them.

8 Q. Employees sometimes don't get along, do they?

9 A. Exactly.

10 Q. That doesn't mean there's any bias?

11 A. Well, it could be perceived by one of -- of the
12 parties as bias, but it's really not (unintelligible)
13 sometimes.

14 Q. So my question was can you identify allegations
15 if taken as true that constituted gender bias in the
16 complaint that was submitted by Liliana Naydan in March of
17 2020?

18 A. In her feeling and her perception, it was. I
19 mean --

20 Q. Does that mean that it actually was or that she
21 just had these subjective feelings?

22 A. She had -- she had those feelings. It was
23 never -- that was never investigated.

24 Q. Is it your job to validate her feelings?

Carmen Borges

Page 101

1 MR. SMITH: Objection to form.

2 THE WITNESS: No. It's my job to take it as an
3 allegation, to see whether it true or not.

4 BY MR. ALLEN:

5 Q. And you never investigated this as --

6 A. No.

7 Q. Would I get the same answers if I asked about
8 racial bias, the second part of it?

9 MR. SMITH: Objection to form.

10 BY MR. ALLEN:

11 Q. I'm sure we can do this for --

12 A. That's an example she gave.

13 Q. I'm just gonna retract that --

14 A. It's the Black male student.

15 Q. Oh, okay. There was -- that's probably what's
16 blacked out. I don't believe so, but --

17 A. Yeah, it's the student. It's an issue with a
18 student that -- that --

19 Q. And I'm honestly not interested in naming this
20 person or -- you know, they play a role in this only to
21 extent that these accusations were made against my client.
22 It's not about him. It's about the accusations made by
23 Liliana Naydan about my client, so I want to just put that
24 on the record.

Farrell Court Reporting

Carmen Borges

Page 102

1 But it says here in your notes -- and these would
2 have been a recording you made of what Liliana Naydan was
3 saying you, right?

4 A. Uh-huh.

5 Q. A year ago, a Black student complained to her
6 and --

7 A. Division head.

8 Q. Division head would have been Friederike Baer?

9 A. Uh-huh.

10 Q. They had a meeting with faculty. She's now
11 feeling his wrath? Does not want to identify male
12 faculty. Wants his identity -- no. Wants his --

13 A. Okay. She's now feeling his I guess, you know,
14 his reaction to that incident.

15 Q. Right. But where it says wants his something --

16 A. Does not --

17 Q. Wants this documented?

18 A. Does not wish to identify male faculty. Wants
19 this documented.

20 Q. Why don't you read the rest, since this is your
21 handwriting?

22 A. Division head aware, working with her, wants to
23 decide, to document. Want to --

24 Q. Wants recorded to documented in our office?

Farrell Court Reporting

Carmen Borges

Page 103

1 A. She has decided to document it in our office,
2 does not want to file a complaint.

3 Q. Okay. So to summarize, there was apparently a
4 Black student who complained to her. Do you know what the
5 substance of that complaint was?

6 A. Yes. What I heard about that was that a Black
7 student complain kind of bias, a bias report.

8 Q. That he --

9 A. It -- it would have been I guess to Friederike.
10 I don't know where that bias report happened, but I get
11 Friederike may have told Lila since he worked on Lila's
12 department, Lila conveyed to him there was a bias report
13 from a student that we need to sit down and discuss.
14 And -- and he came prepare with all the documentation he
15 had against -- against all the background information on
16 that student.

17 Q. What was the background information? Do you
18 know?

19 A. Well, it turned out that the bias report, the
20 complaint of the student was about age, not about race.

21 Q. What were Zack's documents that he brought to
22 this meeting that you just described, if you know?

23 A. I -- I'm not aware. Friederike would know
24 because according to Lila, there was a lot of

Carmen Borges

Page 104

1 documentation, and they met with Friederike in her office.

2 Q. Do you know what the age of the student was at
3 the time?

4 A. I think I heard it was an older student. I mean,
5 older than regular college age student.

6 Q. Do you know you what the cut off for federal age
7 discrimination is?

8 A. Uh-uh.

9 Q. Was any determination made whether this student
10 even qualified to allege age discrimination?

11 A. Well, people -- people allege it. I mean,
12 whether you're qualified or not, people allege things.
13 The issue is whether it's proven.

14 Q. You would agree that we discriminate against
15 people all the time on the basis of age, right? You take
16 away people's licenses when they can't drive anymore,
17 right?

18 MR. SMITH: Objection to form.

19 BY MR. ALLEN:

20 Q. We don't let people under the age of 21 buy
21 alcohol, right?

22 A. Yeah.

23 Q. You know anything about the merit of this, quote,
24 age discrimination complaint?

Carmen Borges

Page 105

1 A. No. It was about a grade or -- no, I don't know.
2 Friederike will be in a better position to explain that.

3 Q. And you know that the student accused my client
4 of discrimination, right?

5 A. That's what I heard. It was a bias report.

6 Q. If you got a complaint of discrimination made by
7 a Black student, would you assume it was on the basis of
8 race?

9 MR. SMITH: Objection to form.

10 THE WITNESS: Say that again. Who would assume?
11 Who would need to assume?

12 BY MR. ALLEN:

13 Q. You as a person who enforces the
14 antidiscrimination policies of Penn State University.

15 A. Okay. If I get a complaint?

16 Q. You got a bias report. The student was Black and
17 accused Zack Di Piero of discrimination. Without saying
18 more, would you assume it was on the basis of race?

19 MR. SMITH: Objection to form.

20 THE WITNESS: If the person is not saying on what
21 basis, is not saying -- well, it could reasonably be
22 assumed that it would be -- typically it's about race. I
23 mean, if the person is Black, you could easily assume that
24 it is.

Farrell Court Reporting

Carmen Borges

Page 106

1 BY MR. ALLEN:

2 Q. Would that be a microaggression to make that
3 assumption?

4 A. I don't understand.

5 Q. Does Professor Naydan's feelings about it make it
6 a microaggression?

7 A. Where is she saying it's a microaggression? I
8 don't see anywhere.

9 Q. Well, assuming in her report the bias report
10 which is Exhibit No. 6 had a blacked out section, and you
11 said that referred to this incident, correct? If you go
12 back to --

13 A. No.

14 Q. -- Exhibit 6?

15 A. It may not. It may not. It may not refer
16 because I never heard the name of that student, so that
17 may not refer to that student.

18 Q. Okay. And I don't want --

19 A. It may refer -- it may refer to the student --

20 Q. You don't --

21 A. -- advising, to the student advising.

22 Q. We don't have to go further. I thought it was
23 about that student that you had testified about. But if
24 you haven't, then we can correct --

Carmen Borges

Page 107

1 A. Yeah. No. No.

2 Q. Now, there's one other. We'll mark as Exhibit 8
3 again some handwritten notes.

4 (Exhibit Borges 8 was marked for identification.)

5 MR. ALLEN: Bates stamped PSU 412. These have a
6 date at the top of April 8, 2020.

7 BY MR. ALLEN:

8 Q. I'm gonna have to ask. Are these your notes?

9 A. Yes.

10 Q. And I'm not -- look. My handwriting is way
11 worse, so I admire your handwriting. Don't get me wrong.
12 And do these have to do with the same incident surrounding
13 the March 2021 bias report by Liliana Naydan?

14 MR. SMITH: I don't mean to interrupt, but I
15 think we keep going back between whether it was March
16 2020, March 2021. Just to clarify for the record, I think
17 it was 2021. But a few times, we've said different dates
18 on when Lila submitted this anonymous complaint.

19 THE WITNESS: Anonymous complaint.

20 MR. SMITH: I think you just said 2021. And
21 before, you said --

22 MR. ALLEN: I think you're right. I think I was
23 going -- I'm glad you're correcting me because I don't
24 know if the bias report itself has any date on it.

Farrell Court Reporting

Carmen Borges

Page 108

1 THE WITNESS: Okay. The anonymous was March '21,
2 the anonymous. Huh?

3 BY MR. ALLEN:

4 Q. So I think the record is now corrected. And I'm
5 grateful for opposing counsel to have caught that, which I
6 was gleefully unaware of that I was doing.

7 A. March 2021 was the anonymous complaint. Okay.

8 Q. And it was Exhibit 6?

9 A. Yes.

10 Q. Is March 2021?

11 A. 2021.

12 Q. And the notes, of course, were also from 2021?

13 A. Also March.

14 Q. Exhibit 7 was notes from that same day, March 31,
15 2021?

16 A. March 31, 2021.

17 Q. Okay. Thank you. And Exhibit 8, then, are notes
18 from April 8, 2021, approximately a week and a day later,
19 right?

20 A. Exhibit 8 or --

21 Q. Exhibit 8 is the --

22 MR. SMITH: The one he just gave you.

23 BY MR. ALLEN:

24 Q. The one I just introduced into the record.

Farrell Court Reporting

Carmen Borges

Page 109

1 A. What did I -- oh, here, the one I have here.

2 Okay. Sorry. All right. So this was --

3 Q. This --

4 A. Okay. This is April '21. April 2021. Okay.

5 Q. And again, the issues are in your handwriting
6 microaggressions created a hostile working environment for
7 Naydan and potentially for students, right?

8 A. Uh-huh.

9 Q. That's more or less taken directly from the first
10 sentence of her complaint, right?

11 A. Uh-huh. Yes.

12 Q. And it says Friederike will have a conversation
13 with the faculty member, correct?

14 A. Correct.

15 Q. So was it clear by this time who the faculty
16 member is even though the complaint was anonymous?

17 A. You have to ask Friederike that, but I believe
18 Friederike knew because they have -- the meeting with a
19 student was in Friederike's office.

20 Q. Now, they discussed the incident we talked about
21 where a Black student accused Zack Di Piero of
22 discrimination in that first paragraph, right? You and
23 Friederike Baer discussed that, right? These are your
24 notes?

Carmen Borges

Page 110

1 A. Uh-huh.

2 Q. And these are your notes. Issues started with --

3 A. Issues started with a complaint from a student
4 spring 2020. Fear he was being accused of racism.

5 Q. And that's what you discussed with Liliana -- I
6 mean with Friederike Baer in this meeting?

7 A. Yes.

8 Q. Is there any indication from Friederike Baer that
9 the fear of being accused of racism wasn't sincere on my
10 client's part?

11 A. I don't recall.

12 Q. Let's look back one more.

13 A. So one thing I did was in her work about the
14 faculty's SRTE. Here's the acronym again. And Friederike
15 said that they were good that, you know, nothing --
16 nothing was reflected in the SRTEs regarding, you know,
17 the student evaluations.

18 Q. Those are Zack Di Piero's SRTEs?

19 A. Uh-huh. So the five and seven are the ratings
20 and the other were the comments.

21 Q. Do you recall Friederike Baer commenting about
22 Liliana Naydan's preoccupation with microaggressions?

23 A. No. In that -- in that meeting, their solution
24 was that she was going to discuss, have a conversation

Farrell Court Reporting

Carmen Borges

Page 111

1 with the faculty member regarding the topics outlined,
2 which would have been what she was alleging.

3 Q. Do you remember Friederike Baer ever being
4 critical of Liliana Naydan and her preoccupation with
5 microaggressions?

6 A. I don't really recall.

7 Q. So you don't recall that Friederike Baer said to
8 you that she puts too much emphasis on microaggressions,
9 meaning Liliana Naydan?

10 A. That was the word of the moment, so I don't
11 recall if she specifically attributed it to her.

12 Q. Who specifically attributed what to whom?

13 A. If Friederike attributed to Liliana, but it was
14 common at the time that people were using the word
15 microaggressions very loosely.

16 Q. Was it common that faculty members would tell on
17 each other about microaggressions anonymously?

18 A. I don't know. Friederike would know her faculty
19 there, how --

20 Q. Liliana Naydan asked that this become a record in
21 your office associated with my client, right?

22 A. She wanted that documented, but never -- she
23 never follow up on -- on acting on it or wanting anything
24 done on it. It's just documented.

Carmen Borges

Page 112

1 Q. It is documented.

2 A. Exactly. And the resolution was that Friederike
3 was going to have a conversation with the faculty member.

4 Q. But you don't consider --

5 A. -- the employees in your area. If you're the
6 supervisor, there is -- you know, thing -- thing going on
7 between them. So you have to, you know, have a
8 conversation with both of them.

9 Q. And you don't consider going behind someone's
10 back and submitting an anonymous complaint without talking
11 to them directly, that's -- isn't that a microaggression?

12 MR. SMITH: Objection to form.

13 THE WITNESS: No. That's common. That happens.
14 People do file complaints without letting the person know
15 that they did. And again --

16 BY MR. ALLEN:

17 Q. She's trying to get something on his record in
18 your office.

19 A. She's putting this -- yeah. She submitted this
20 anonymously and she never activated it and never wanted to
21 follow up on this.

22 Q. So your testimony today is that she never
23 followed up on this?

24 A. She never wanted this to be investigated or she

Farrell Court Reporting

Carmen Borges

Page 113

1 never wanted to provide a name of the faculty member
2 either.

3 Q. Okay. And you're also aware that Friederike Baer
4 knew who it was specifically, the respondent?

5 A. I think so. I'm not totally clear, but I think
6 Friederike knew.

7 Q. I want to look at another string of e-mails on a
8 completely different topic. Did your office ever become
9 aware of a discussion on the university listserv in August
10 of 2020 concerning new police officers that are being
11 introduced in the Penn State police force?

12 A. Yes.

13 Q. Was that investigated by your office?

14 A. Yes.

15 Q. I'm gonna mark as Exhibit 9 an e-mail chain which
16 begins with the date August 12, 2020 and the Bates number
17 ZDP 0138.

18 (Exhibit Borges 9 was marked for identification.)

19 BY MR. ALLEN:

20 Q. And again, that's following up because I've
21 already got the date mistaken once. This is August 12,
22 2020, so we're going back in time a little bit.

23 A. Oh, yes. August 2020. Yes.

24 Q. So I take it from your reaction that you

Farrell Court Reporting

Carmen Borges

Page 114

1 recognize this e-mail chain?

2 A. Yes.

3 Q. And I'll just represent for the record that it's
4 from the e-mail of my client, Zack Di Piero. And I'm not
5 asking about that, whether you recognize his e-mail. I'm
6 asking you whether you recognize the substance of the
7 e-mails.

8 A. I have very familiar with that, yes.

9 Q. And so let me make sure. As your counsel -- he's
10 not in the room, but Jim Keller said that these Gmails go
11 from start to finish whereas Outlook e-mails go from
12 finish to start, which is unendingly confusing for us
13 lawyers.

14 What's -- can you describe what this dispute was
15 about?

16 A. The new hires were highlighted or introduced in
17 the website. And Sharon, who is a faculty member,
18 researcher in these areas of racism and other, she made a
19 comment in the website something about it looks like this
20 office -- or this officer looks like the type that would
21 need training, something like that.

22 Q. Was it diversity, equity and inclusion training
23 she meant?

24 A. It could be assumed that that's the training she

Carmen Borges

Page 115

1 meant, yes.

2 Q. I'm sure we'll get to her e-mails --

3 A. I don't know whether she said it in specific
4 word, but that's how it was interpreted.

5 Q. You see the second e-mail here? Before we go on,
6 why would anyone say that about this police officer? Do
7 you remember what he looked like, what his qualifications
8 where? Why on Earth would they single him out as someone
9 who needed training?

10 A. Well, that was -- that was her assessment.

11 Q. What was your understanding of why he was
12 targeted as someone who needed training?

13 A. I didn't have a say into it. I just -- I just
14 address her -- her -- her comments about him. That was
15 my -- the nature of my involvement. Sharon Holt, the
16 professor.

17 Q. Sharon Holt is a professor of what?

18 A. She's the professor of -- I don't know the topic,
19 but she does research on -- on racism and -- and --

20 Q. Okay. And is she in the English department, by
21 any chance?

22 A. No.

23 Q. Okay. And this was a listserv for all faculty at
24 Penn State?

Carmen Borges

Page 116

1 A. For all faculty.

2 Q. Limited to Penn State Abington?

3 A. Yes.

4 Q. So it wasn't the whole system?

5 A. No.

6 Q. It was Penn State Abington?

7 A. Just Abington.

8 Q. Okay.

9 A. Penn State Abington.

10 Q. And so the second e-mail down is an e-mail by
11 Liliana Naydan, right?

12 A. Yes, I see it.

13 Q. Have you talked to her about what she said in
14 this discussion?

15 A. To whom?

16 Q. Liliana Naydan.

17 A. No. I didn't even know Liliana was involved in
18 this at all. I first when I saw this e-mail is when I saw
19 her name there. But at the time, I didn't. It was
20 Sharon. The issue was Sharon. The comment was made by
21 Sharon.

22 Q. Sure. Do you see how she addresses Steve Bloomer
23 by his first name? Steve, I respect you very much, but
24 Black Lives Matter. That's not always a comfortable or

Carmen Borges

Page 117

1 easy thing to say if you're a white person trying to say
2 it right. It doesn't mean that you're always going to be
3 welcoming, but I think we need to keep saying it and
4 backing up what we say with real actions and I think it's
5 okay to feel uncomfortable by a string of e-mail messages
6 from our police because those messages are political, even
7 if they're trying to masquerade as neutral. The messages
8 from our police have been making me uncomfortable.

9 Did I read that right?

10 A. Yes, but I don't know what this is about.
11 Messages from our police? I don't know what she's taking
12 about here.

13 Q. If you look down to the next string, it says in
14 response to S. Holz's letter to the campus. Do you see
15 that?

16 A. Uh-huh. It was another person. Uh-huh.

17 Q. That's Theresa Marie Bloom?

18 A. Uh-huh.

19 Q. And she says isn't the judging of another based
20 on outward appearances and experience the very definition
21 of racism? See how she says that in the second paragraph?
22 And there's another e-mail by Steve Bloomer below that.
23 Then, there's one by Kevin Charles Cannon. Do you know
24 who Kevin Charles Cannon is?

Farrell Court Reporting

Carmen Borges

Page 118

1 A. Uh-uh.

2 Q. Looks like he's a professor of chemistry at Penn
3 State Abington in his footer at the bottom of ZDP 139. Do
4 you see that?

5 A. Uh-huh.

6 Q. And you see that he says so exactly what about
7 any of these officers' introductions triggered you and
8 Sharon, the assumption that someone of this, quote,
9 caliber requires antiracism and diversity training,
10 question mark? Did I read that correctly?

11 A. Uh-huh.

12 Q. And he also addresses you and Sharon, right?

13 A. Right.

14 Q. And presumably since the e-mail below that is
15 from Liliana Naydan, he's addressing her, right?

16 A. Sounds like it.

17 Q. And there's a subject that says an open reply to
18 Sharon Holt on the subject line of Liliana Naydan's e-mail
19 that starts at the top of ZDP 0138. Do you see that?

20 A. Uh-huh.

21 Q. Does that refer to this discussion of police
22 officers and that Sharon Holt apparently made a reaction
23 to the announcement of a police officer?

24 A. It sounds like it. Uh-huh.

Farrell Court Reporting

Carmen Borges

Page 119

1 Q. You skip down to the bottom of 0140, there's
2 another e-mail by Liliana Naydan addressed to Dear Kevin
3 and all. She says the problem for me is that our country
4 is in a state of crisis because the police are killing
5 Black people, right?

6 A. Where -- is that at the beginning or at the end?

7 Q. It's the second sentence that begins --

8 A. Oh, yeah. Okay. Must have been as a result of
9 the George Floyd incident, huh?

10 Q. George Floyd was, of course, murdered at the end
11 of May 2020. Am I right about that?

12 A. Yes.

13 Q. So this is that Covid, slash --

14 A. Oh, yeah.

15 Q. -- George Floyd summer?

16 A. Yeah.

17 Q. Do we know what I'm talking about when I say
18 that? I mean, it's the -- it affected us all, obviously.

19 A. Yeah, exactly.

20 Q. Liliana Naydan talks about the police as a
21 systemic problem. She also says in the sentence that
22 begins on the very tail end of the third line and that
23 problem has everything to do with who has power and who
24 lacks it, right?

Carmen Borges

Page 120

1 A. Uh-huh.

2 Q. And then in the final line, she talks about
3 dismantling the racist institutions that oppress and
4 murder them and -- Black students?

5 A. Yeah, to the George Floyd situation. It was on
6 everybody's mind. Uh-huh.

7 Q. But does that clarify that Liliana Naydan was
8 participating in this conversation?

9 A. Looks like it, yes.

10 Q. And she was addressing Dear Kevin by name,
11 correct?

12 A. Uh-huh.

13 Q. And then apparently, there's a Susan Catherine
14 Owens who felt a little bit disturbed by this discussion
15 in the next one down. If you look at the -- she addresses
16 Steve. In her second line, she starts out a sentence on
17 that line I found this second e-mail to be very disturbing
18 and upsetting. I will be sending Officer Lacey a personal
19 e-mail welcoming him to Penn State Abington, right? See
20 it begins on the second line of her e-mail in the middle
21 of the line?

22 A. Oh, yeah.

23 Q. I found this second e-mail --

24 A. Yeah.

Carmen Borges

Page 121

1 Q. So I read that correctly?

2 A. Yes.

3 Q. So did you understand from her statement that she
4 did not approve of being lectured about how police are
5 somehow systemically racist or something like that?

6 A. She clearly says she does not approve that.
7 Yeah.

8 Q. I found one more. And there's Karina Vardo
9 addresses Lila and Sharon, right?

10 A. Uh-huh.

11 Q. She addresses them by their first name, right?

12 A. Uh-huh.

13 Q. She talks about, quote, precariously -- excuse
14 me. I'll just read the sentence that begins at the end of
15 the first line. I'm seeing several claims of reverse
16 e-mail -- excuse me. I'm seeing several claims of reverse
17 racism in this e-mail thread that precariously ignore that
18 racism is about prejudice plus institutional system power,
19 right? And there's another e-mail by someone named Dawn
20 Michelle Kramlich?

21 A. Uh-huh.

22 Q. She says in the second paragraph the oppressor by
23 definition can't be the oppressed and so forth, right?

24 A. Uh-huh.

Farrell Court Reporting

Carmen Borges

Page 122

1 Q. And she says remembering that is key, especially
2 for those of us who benefit from white privilege, right?

3 A. Uh-huh.

4 Q. You know what Penn State faculty mean when they
5 say white privilege?

6 A. Having the power and the privilege and the power,
7 I guess.

8 Q. And you said you grew up identifying as white,
9 right?

10 A. Uh-huh. Yes.

11 Q. Do you feel like you had power and privilege in
12 Puerto Rico?

13 A. I wanna say that it certainly was easier for me
14 to get ahead than if I were -- had been Black.

15 Q. But the (unintelligible)?

16 A. Yes. Believe it or not, there -- there's --
17 there is racism in Puerto Rico.

18 Q. I don't deny that. Are you aware of any embedded
19 white privilege at Penn State?

20 A. White privilege? How can I answer that? I guess
21 all the positions of powers and all the decisions are made
22 by white people at Penn State.

23 Q. And --

24 A. Is that a privilege of what?

Farrell Court Reporting

Carmen Borges

Page 123

1 Q. Including by yourself? The decisions you make
2 come from a position of white privilege in your office of
3 affirmative action?

4 A. No, I wouldn't describe them as white privilege.

5 Q. As an officer of the office -- or affirmative
6 action office, excuse me, if faculty members were
7 exercising their white privilege to discriminate against
8 Black employees, staff or students, you would certainly
9 address that, correct? Did you do it in this case to
10 address the white privilege in the police department?

11 A. Yes. In this case, I had -- I had a conversation
12 with Sharon about -- about -- about her --

13 Q. What did you say to Sharon?

14 A. That this was uncomfortable, that this was
15 inappropriate.

16 Q. You think Sharon Holt in condemning racism among
17 the police, was she exercising white privilege?

18 A. She was exercising intellectual privilege because
19 she -- she -- that's her line of -- of research and work.

20 Q. And presumably, she's an expert in this area,
21 right?

22 A. Well, apparently she writes and she's -- that's
23 her field. I didn't get into it. She is a member.
24 She -- she writes about that, so that gave -- that gives

Carmen Borges

Page 124

1 her -- I mean, we can talk about privilege or advantage.
2 That gives her that view because she -- she does research
3 and she works in those fields.

4 Q. I mean, I don't even know if she's white or not,
5 so --

6 A. She's white.

7 Q. -- I suppose I should ask.

8 A. She's white.

9 Q. She's white? And you would describe her
10 privilege as did you say intellectual privilege?

11 A. Intellectual, yeah. Knowledge privilege that the
12 common person would not have. But in any case, we had a
13 conversation. I -- I conveyed that that was inappropriate
14 and -- and the resolution was that she was going to
15 apologize.

16 Q. Who did she apologize to?

17 A. To the web -- to the web page or to the police
18 officer. Let me see. Was she gonna put it online or she
19 was gonna talk to him? I think -- I remember Sharon was
20 telling me that she wanted to have a conversation with him
21 and apologize in person. I don't know if that happened.

22 Q. So before we move on, did you recall Professor
23 Naydan saying on -- in the e-mail that is Wednesday,
24 August 12, 2020 at 9:12 a.m. -- that's on the first page,

Farrell Court Reporting

Carmen Borges

Page 125

1 I believe?

2 A. First page of what?

3 Q. The Exhibit No. 9.

4 A. Okay. Is this number nine?

5 Q. Yes. The number nine is the -- Exhibit No. 9
6 starts with the Bates stamp 0138.

7 A. I had an eight. So it's nine? Okay.

8 Q. Unfortunately, we don't have the stamps, which we
9 would have if the reporter was in person. So she's saying
10 it's not always comfortable to talk about these topics,
11 correct?

12 MR. SMITH: Objection to form.

13 THE WITNESS: Where at? On what page?

14 BY MR. ALLEN:

15 Q. Sure. It's the second e-mail on the Bates
16 stamped page, which is --

17 A. 140 or what page?

18 Q. 0138, the first page of Exhibit 9.

19 A. Okay. The first page.

20 Q. The second e-mail. Again, I'll read it again.

21 A. Okay.

22 Q. That's not always a comfortable or easy thing to
23 say if you're a white person trying to say it right. It
24 doesn't mean that you're always going to be welcoming, but

Carmen Borges

Page 126

1 I think we need to keep saying it. Did I read that
2 correctly?

3 A. Is this from Lila?

4 Q. Do you see in the -- Liliana Naydan is in the to
5 line?

6 A. Liliana Naydan. Okay. Steve, referring to Steve
7 or not? Not the one to Steve?

8 Q. She says Steve. She addresses someone by name
9 Steve.

10 A. Okay. Uh-huh. I respect you very much, but
11 Black lives do matter.

12 Q. Incidentally, is this a microaggression to
13 address someone by their name?

14 A. No.

15 Q. In a critical e-mail?

16 A. No. It's very common.

17 Q. Was Liliana Naydan somehow tough enough to
18 withstand this kind of being addressed by her name in this
19 e-mail exchange?

20 MR. SMITH: Objection to form.

21 THE WITNESS: Don't know -- for that, but it's
22 common. I'm on departments that people call each other by
23 first names.

24 BY MR. ALLEN:

Farrell Court Reporting

Carmen Borges

Page 127

1 Q. Even when having ideas that are critical of each
2 other, right?

3 A. Uh-huh. Yes.

4 Q. Do you expect faculty members to be grown up
5 enough to deal with mutual criticism like this?

6 A. Yes.

7 Q. Now, the point of reading that sentence was I
8 wanted to ask you this question. By saying that's not
9 always a comfortable easy thing to say, but then she
10 follows up by saying but I think we need to keep saying
11 it, did you understand by that that Professor Naydan
12 embraced feeling uncomfortable in these conversations
13 about race?

14 MR. SMITH: Objection to form.

15 THE WITNESS: Wait a minute. I'm not following
16 your line.

17 BY MR. ALLEN:

18 Q. Sure.

19 A. That's not always -- that's not always
20 comfortable or easy thing to say if you're a white person
21 trying to say it right. It doesn't mean that you're
22 always going to be -- to be welcomed, but I think we need
23 to keep saying it. Okay. Is what it is, need to keep
24 saying it, backing up what we say. And I think it's okay

Farrell Court Reporting

Carmen Borges

Page 128

1 to feel uncomfortable by the string of e-mail messages
2 from our police officers because those messages are
3 political.

4 Q. She thinks it's okay to feel uncomfortable,
5 right?

6 A. Uh-huh.

7 Q. Why did she feel it's okay to lecture someone
8 else and make them feel uncomfortable?

9 MR. SMITH: Objection to form.

10 THE WITNESS: Again, you have to ask her that.

11 MR. ALLEN: Let me introduce Exhibit 10, which
12 will be a document. It's Bates stamp ZDP 175.

13 (Exhibit Borges 10 was marked for identification.)

14 BY MR. ALLEN:

15 Q. Again, these are more e-mails, this one by Sharon
16 Holt, right? This is part of that same discussion?

17 A. Uh-huh. Our own healing, our own racial healing.
18 I mean, this is -- this is where the George Floyd trauma
19 comes in.

20 Q. Sure. And this is Sharon Holt. Do you think
21 this is part of the apology that you referring to?

22 A. My -- this may be part of it, but my
23 understanding was that she wanted to apologize in person
24 to the officer.

Farrell Court Reporting

Carmen Borges

Page 129

1 Q. Okay. I wanted to ask you a question about this.
2 She circulates some resources, right, at the bottom of her
3 message?

4 A. Sharon, we have work to do. Where? Oh, here --

5 Q. Here are some blue links?

6 A. Yeah, under her -- her name.

7 Q. And one of them is embracing discomfort in equity
8 work, right?

9 A. Conversation with white people about -- yeah.

10 Q. Right. One is a conversation with white people
11 about race, correct?

12 A. Uh-huh.

13 Q. Any indication that Sharon Holt was interesting
14 in having -- interested in having a conversation with
15 Black people about race at all?

16 MR. SMITH: Objection to form.

17 THE WITNESS: This may happen in her line of
18 research, also.

19 BY MR. ALLEN:

20 Q. So is your answer no to my question?

21 A. I have no knowledge of that.

22 Q. So although you testified that you're not sure if
23 this was her apology, you are testifying that this was
24 part of that exchange about the police officers, right?

Farrell Court Reporting

Carmen Borges

Page 130

1 A. Yes.

2 Q. You can put that one aside. I'll introduce this
3 as Exhibit 11.

4 (Exhibit Borges 11 was marked for identification.)

5 BY MR. ALLEN:

6 Q. This will be Bates stamped on the first page PSU
7 2415. This is also from that same exchange of August 12,
8 2020. Incidentally, you would agree that my client, Zack
9 Di Piero, was subordinate to Liliana Naydan in the
10 program?

11 A. Yes.

12 Q. 'Cause she had power over him, right?

13 A. She had -- she was a coordinator. She didn't do
14 his evaluation and she didn't have anything to do with his
15 pay increases or his evaluation. So if you consider
16 power, that's where the power is. The others, she was
17 coordinating the programs.

18 Q. Did she have more or less authority than Zack Di
19 Piero in the program?

20 A. I think she had more. As a coordinator, she had
21 more.

22 Q. So by her definition, isn't it only possible for
23 her to discriminate against Zack, not vice versa 'cause
24 she has the authority, he doesn't?

Carmen Borges

Page 131

1 MR. SMITH: Objection to form.

2 THE WITNESS: Yeah. That would -- that would
3 be -- that's what she -- could also be arguing that she's
4 a female and he's a male, and there's a power dynamic with
5 genders also.

6 BY MR. ALLEN:

7 Q. So again, here's an e-mail in this thread
8 about -- sort of picks up with an e-mail we've already
9 seen on 02416, page PSU 02416. You see where Liliana
10 Naydan circulates the e-mail Steve, I respect you very
11 much, but Black Lives Matter, right? Then, there's so
12 exactly what about any of these officers introductions
13 triggered you and Sharon, right?

14 A. Uh-huh.

15 Q. And I don't really wanna dwell on those things.

16 A. I think there's -- this was in the other one.
17 Uh-huh.

18 Q. But there's a new thread that begins on page
19 2415, as sometimes happens in lengthy threads, right?
20 Kevin Charles Cannon says all racism is wrong, right? You
21 see where he says that in the e-mail of August 12, 2020 at
22 10:06 a.m.?

23 A. It's in the first --

24 Q. If you look at --

Farrell Court Reporting

Carmen Borges

Page 132

1 A. They both look the same.

2 Q. I'm just gonna indicate for the --

3 A. Yeah. Okay. So who's writing? Who's writing
4 here?

5 Q. Well, it says -- I'm just indicating for the
6 witness Kevin Charles Cannon, right? And this says Kevin
7 Charles Cannon as the footer --

8 A. Okay.

9 Q. -- correct? So he's saying all racism is wrong,
10 right?

11 A. Uh-huh.

12 Q. Is that something you agree with, Ms. Borges?

13 MR. SMITH: Objection to form.

14 THE WITNESS: Yeah, I would -- I would agree, but
15 we have to remember the component of power, where the --
16 who holds the power.

17 BY MR. ALLEN:

18 Q. And again, Lilitiana Naydan responds to him by
19 name. Hi, Kevin, right?

20 A. Uh-huh.

21 Q. I don't think reverse racism exists since Black
22 people don't have power over white people in the U.S.,
23 right?

24 A. Yeah. That's what --

Carmen Borges

Page 133

1 Q. And she again addresses him directly by name,
2 right?

3 A. Uh-huh.

4 Q. Is that a microaggression?

5 A. No.

6 Q. And you receive no complaint that Liliana Naydan
7 was so fragile for whatever reason she couldn't be
8 addressed by name in a contentious conversation with
9 faculty members, right?

10 A. No.

11 Q. What did the cop look like who they were talking
12 about, Officer Lacey?

13 A. I think there was a picture of him somewhere
14 circulated.

15 Q. I don't think it's any of these exhibits. But
16 you can recall what he looked like, right?

17 A. Yes.

18 Q. Can you describe it for the record?

19 A. White, heavy -- heavy set.

20 Q. Middle aged, would you say?

21 A. Uh-huh.

22 Q. I'm gonna mark as Exhibit 12 for the record an
23 e-mail exchange with Bates number ZDP 0181. It's also
24 dated August 12, 2020.

Farrell Court Reporting

Carmen Borges

Page 134

1 (Exhibit Borges 12 was marked for identification.)

2 BY MR. ALLEN:

3 Q. Now, if we go to the bottom -- well, let's start
4 at the top since they go in chronological order. Do you
5 remember this e-mail?

6 A. I never saw this e-mail.

7 Q. Do you know who Andy is who's signing this
8 e-mail?

9 A. Yes. He's now the interim chancellor.

10 Q. When you say now, you mean August 12 --

11 A. No, no. At that time, he was academic affairs
12 person.

13 Q. You see how the header of this e-mail says from
14 the office of the interim chancellor?

15 A. Oh, so okay. So he was by then. Okay.

16 Q. So he was acting as interim chancellor at this
17 time?

18 A. In 2020? As interim chancellor now.

19 Q. And my purpose --

20 A. Oh, well. It says from the office.

21 Q. Well --

22 A. Now.

23 Q. Yeah. We can go into who the interim chancellor
24 is when they are and not when they're not. So this, he

Carmen Borges

Page 135

1 writes about planning a forum to continue the conversation
2 around these issues. See at the bottom there?

3 A. Plan a forum. Yeah. Uh-huh.

4 Q. Did your office assist in planning those forums?

5 A. No.

6 Q. Do you know what the content was?

7 A. Not at all. Don't know.

8 Q. Did you talk with Andrew August about anything
9 concerning the police officers' introduction?

10 A. No.

11 Q. So I wanted to call your attention to this e-mail
12 by Michael Joseph Harty that followed. You see that?

13 A. Uh-huh.

14 Q. Have you seen this e-mail before?

15 A. No, I have not seen this before.

16 Q. I'm just gonna call your attention to the second
17 to last paragraph of Mr. Harty's e-mail. It starts the
18 leadership of this university. Do you see that?

19 A. The second page or the first page?

20 Q. It's the second to last paragraph of his e-mail.

21 A. Okay.

22 Q. It says the leadership of this university sends
23 out e-mails all the time about, open quote, when you see
24 something, say something, close quote, ethics being

Farrell Court Reporting

Carmen Borges

Page 136

1 protected by the, quote, whistleblower law and reporting a
2 hostile and toxic work environment. Well, I am starting
3 to feel very uncomfortable with the posts that I have seen
4 this morning and continue to see, and I feel the Abington
5 campus may be coming dangerously close to the textbook
6 definition of a, quote, hostile and toxic, close quote,
7 work environment.

8 Did I read that correctly?

9 A. Yes.

10 Q. Does that indicate to you that other people were
11 feeling that the conversation on race in which Professor
12 Naydan was participating as a prominent member was
13 creating a hostile environment at Penn State?

14 MR. SMITH: Objection to form.

15 THE WITNESS: I don't see that.

16 BY MR. ALLEN:

17 Q. It's the job of your office to investigate
18 complaints like this, right?

19 MR. SMITH: Objection to form.

20 BY MR. ALLEN:

21 Q. It's the job of your office to investigate
22 allegations like this, right?

23 A. I guess it should be, but I don't -- the only
24 moment in our office was to deal with Sharon, talk to

Carmen Borges

Page 137

1 Sharon who was the one that -- that put the comment.

2 Q. And you never reached out to Michael J. Harty,
3 right?

4 A. No. I had never seen this -- this communication.

5 Q. Let's -- one more on this line of questioning.
6 Incidentally, do you remember a Black cop who was
7 introduced in the same time period -- a Black police
8 officer, let me put it this way?

9 A. In a same listserv, introducing to the list? I
10 believe so. I vaguely believe that there was.

11 Q. Were there any complaints about the Black police
12 officer needing, quote, antiracism training?

13 A. No.

14 Q. There were only complaints about a middle aged,
15 overweight white cop needing antiracism training, correct?

16 A. I think it had a lot to do with how he described
17 his allegiance or his job description.

18 Q. Do you have any knowledge that this white police
19 officer, Mr. Lacey, had ever engaged in racist behavior
20 towards Black people?

21 A. I have no knowledge.

22 Q. Did anyone bring up any evidence at the time that
23 he had done anything concretely to discriminate against
24 Black people?

Carmen Borges

Page 138

1 A. No.

2 Q. In your entire history of working for Penn State,
3 have you ever even heard of a police officer murdering a
4 Black student on campus?

5 A. No, I never heard that.

6 Q. Off campus?

7 A. Off campus University Park, yes, there was an
8 incident of a murder.

9 Q. Where a police officer murdered a Black student?

10 A. Uh-huh.

11 Q. What happened?

12 A. They were going to detain him for, um, what do
13 you call this about taking somebody for care, mental care.

14 Q. A civil commitment?

15 A. Yeah. There's --

16 Q. That he was going to be committed to the hospital
17 because of a psychiatrist condition?

18 A. Apparently, he had some issues and he had family
19 had been -- had reported him not being -- not being able
20 to contact him. And then, the police went to the door to
21 knock on the door, whatever happened there. He came out
22 aggressively, and a police officer shot him in the hall
23 right there at the residence hall.

24 Q. Was that determined to be a murder?

Carmen Borges

Page 139

1 A. I don't know how legally it worked out.

2 Q. Obviously, it's a tragedy.

3 A. Yes.

4 Q. Even if someone is killed lawfully in the course
5 of duty, it's disheartening, right?

6 A. Uh-huh.

7 Q. A --

8 A. It's happening all the time. I mean --

9 Q. But you know of no evidence that found the police
10 officer at Penn State guilty of murdering this man in cold
11 blood?

12 A. I'm not aware of the verdict on that case.

13 MR. ALLEN: Can we go off the record, please?

14 (A break was held.)

15 BY MR. ALLEN:

16 Q. Ms. Borges, do you remember in September of 2021
17 Zack Di Piero submitted a complaint to your office?

18 A. Yes.

19 Q. What was that complaint about?

20 A. About a topic -- about a topic of the discussion
21 in program meetings based on a presentation done by a
22 researcher in the area. He had done a presentation at a
23 conference, and then that was followed up with it being
24 the topic for discussion in that English program.

Farrell Court Reporting

Carmen Borges

Page 140

1 Q. Do you remember what program you're talking
2 about? You said in the program. What were you talking
3 about?

4 A. Asao Inoue. Asao Inoue.

5 Q. That's the name of the scholar.

6 A. That's the name of the scholar who did a
7 presentation, a program. I don't know exact when, but
8 Lila certainly did. And then, Lila wanted to pick up on
9 that topic and use it for discussion among the faculty.

10 Q. Why did my client, if you know, complain about
11 this presentation by Asao Inoue?

12 A. Because of the -- of the -- of the labeling or
13 the topic of the presentation.

14 Q. What was the labeling?

15 A. It was like, you know, white people are a problem
16 or whatever dramatic or drastic topics or headlines.
17 Uh-huh.

18 Q. Do you remember any of the other headlines?

19 A. White people are a problem. If you're in front
20 of a classroom and you're a white person, that's a
21 problem. Yeah.

22 Q. About how many of these headlines were there that
23 were presented in this -- what did you -- first of all,
24 what was this series of things?

Carmen Borges

Page 141

1 A. They were meeting discussions of topic -- topics
2 for the English topic discussions.

3 Q. For the English program?

4 A. For the English program.

5 Q. In which both Liliana Naydan and my client, Zack
6 Di Piero, were professors, right?

7 A. Exactly.

8 Q. And about how many of these headlines, if you
9 remember, were there?

10 A. Three.

11 Q. And just for the record, I wanted to spell Asao
12 Inoue. I know his name 'cause it's not intuitive.

13 A-S-A-O. His last name I-N-O-U-E; is that correct?

14 A. Uh-huh.

15 Q. And how did you get the complaint from Zack Di
16 Piero?

17 A. He filled out a form, completed a form and send
18 the form, yeah.

19 Q. Was that part of the normal channels for
20 submitting a complaint --

21 A. Yeah.

22 Q. -- at Penn State Abington?

23 A. Yes.

24 Q. Anywhere --

Farrell Court Reporting

Carmen Borges

Page 142

1 A. In the system.

2 Q. And what happened next?

3 A. I contacted him about it, that we had received it
4 and that we needed to discuss it further and we scheduled
5 a meeting.

6 Q. Did that meeting take place?

7 A. Yes.

8 Q. Do you remember the date, by any chance?

9 A. Let's see. That was in September that he file,
10 so it would have been maybe September or somewhere around
11 there.

12 Q. And what did you discuss in that meeting?

13 A. What his issues were, why he -- what was the
14 problem. What was the concern he had with that topic.

15 Q. What did he say his concern was?

16 A. He felt personally attacked.

17 Q. Why?

18 A. Because he's white and he's talking about white
19 people being whatever. What's the word? I'm drawing a
20 blank here. White people being a problem.

21 Q. All white people?

22 A. Well, it's phrased white people, so it can be
23 understood to mean all white people.

24 Q. And did you tell him it was about the white race?

Farrell Court Reporting

Carmen Borges

Page 143

1 A. Yeah.

2 Q. In that meeting?

3 A. Yeah. We talk about that, that it's refer
4 generally to the white race.

5 Q. And in your experience an as officer of the
6 affirmative office, has anyone ever given a series of
7 presentation about how Black people are a problem on
8 campus?

9 A. I can't -- I can't -- I can't think of that.

10 Q. If a teacher was lecturing in a classroom about
11 how Black people are the problem at Penn State Abington,
12 would you expect to get complaints in your office?

13 A. Probably.

14 Q. What would you do about those complaints?

15 A. You know, question what's the problem. What are
16 you talking about? What issues do you have?

17 Q. Do you recall telling Zack Di Piero that you are
18 an academician, you are at a university and you are, you
19 know, a professor. So, you know, that doesn't mean you
20 have to be convinced. It only means you have to give
21 yourself the opportunity to see what's the perspective
22 here. Do you recall saying that to him?

23 A. Yes.

24 Q. And do you recall him asking you if it was

Farrell Court Reporting

Carmen Borges

Page 144

1 discrimination if there was a pattern month after month
2 and there were numerous examples of being subjected to
3 programming indicating that the white race was somehow a
4 problem?

5 A. Well, they were programs. I don't know if they
6 were that many, but that was the topic of the -- of the
7 semester.

8 Q. Do you remember Professor De Piero complaining at
9 that time in the meeting in September 2021 that month
10 after month he was being exposed to this stuff?

11 A. I don't know if month after month, but he said he
12 was being exposed to it. I think if it was month after
13 month because those meetings are not that frequently. But
14 the fact that he had -- he felt that he -- he didn't agree
15 with that and that he was -- he didn't understand it. He
16 didn't understand that message from that researcher or the
17 paper that researcher wrote. He didn't understand it at
18 all and --

19 Q. Is it fair to summarize what he was saying is
20 that he was feeling harassed by the constant exposure to
21 the material of this nature?

22 A. No, it's not fair because it was a voluntary
23 meeting. He did not have to be part of it. He did -- he
24 did not have to be part of it. He just felt uncomfortable

Farrell Court Reporting

Carmen Borges

Page 145

1 just by the fact that it was being discussed, that it was
2 being brought to the -- to the department.

3 Q. You've already testified that Professor Naydan
4 had authority over Zack Di Piero, correct?

5 MR. SMITH: Objection to form.

6 THE WITNESS: She was the coordinator, but things
7 were coordinated with participation and -- and input from
8 the rest of the faculty. It wasn't that her only
9 imposition or position.

10 BY MR. ALLEN:

11 Q. If someone was harassing a Black professor, would
12 it be an excuse to say well, he didn't have to come to the
13 meeting?

14 MR. SMITH: Objection to form.

15 THE WITNESS: Nobody has to go to this. Those
16 meetings were voluntary. They didn't have -- people
17 didn't have to participate.

18 BY MR. ALLEN:

19 Q. That's not my question. I said if someone was
20 harassing a Black professor in a meeting, would it be an
21 excuse for the person harassing the Black professor that
22 the Black professor didn't have to be there?

23 MR. SMITH: Objection to form.

24 THE WITNESS: Whose decision would it be for the

Carmen Borges

Page 146

1 Black professor to be there or not? Not the other --

2 BY MR. ALLEN:

3 Q. It's a voluntary meeting, right?

4 A. It's a voluntary meeting.

5 Q. So it's okay to harass Black people if the
6 meeting's voluntary?

7 MR. SMITH: Objection to form.

8 BY MR. ALLEN:

9 Q. Would that be okay at Penn State? This is on
10 record. You're testifying.

11 A. You know, I am trying to --

12 Q. You're testifying as someone who enforces the
13 affirmative action policies at Penn State.

14 A. But I'm trying to make sense of your question.
15 What is it that you're asking?

16 Q. Well, you said it's not harassment of my client
17 because the meeting was voluntary, right?

18 MR. SMITH: Objection to --

19 THE WITNESS: I mean, it's voluntary to all the
20 faculty that wanna go discuss that topic.

21 BY MR. ALLEN:

22 Q. So what my question is --

23 A. Uh-huh.

24 Q. If a Black professor was there and he was being

Carmen Borges

Page 147

1 harangued as the problem, the Black professor is the
2 problem, would it be okay because it was just a voluntary
3 meeting?

4 MR. SMITH: Objection to form.

5 THE WITNESS: If you're individually targeting a
6 person, yes. That's -- that's a different situation if
7 you're targeting a specific person. But if you're
8 discussing about a Black race, it's -- it's not a specific
9 to that individual. It's not specific to that particular
10 Black faculty.

11 BY MR. ALLEN:

12 Q. But clearly, you would agree with me that if I
13 started saying Puerto Ricans are the problem in this
14 meeting, which I certainly do not agree with, you would
15 feel personally offended by that, correct?

16 MR. SMITH: Objection to form.

17 THE WITNESS: Not necessarily. I would wanna
18 know what -- why are you saying that. What's -- you know,
19 what are the problem. Why are you saying that?

20 BY MR. ALLEN:

21 Q. So it would be natural for someone in that
22 situation to ask questions critical of the content of such
23 a ridiculous statement, correct?

24 MR. SMITH: Objection to --

Farrell Court Reporting

Carmen Borges

Page 148

1 THE WITNESS: And that was -- exactly. And that
2 would have been the purpose of what I was, you know,
3 thinking is if that's the purpose of those meetings, let's
4 get to the what is -- what's the message here and what do
5 we need to learn from this. What is the message? Let's
6 unpack this message. Beyond the titles, the shocking
7 titles, what is it that we as writing professionals need
8 to -- need to -- need to be discussing and learning. That
9 was the purpose of those meetings.

10 BY MR. ALLEN:

11 Q. And you encouraged Professor De Piero to go to
12 the meetings and engage with them critically, right?

13 A. I said that's one option he had if he didn't
14 understand what was going on. He did not understand the
15 topic. He did not agree with it. He didn't understand
16 it. Getting beyond the shocking titles, there is a
17 message here for writing -- for writing professionals. So
18 maybe you should go and question what is the message.
19 What do I need to be considering or looking at
20 differently? That's a critical involvement.

21 Q. And he should do that until he understood it,
22 right?

23 A. I never said until he understood it. I said
24 until you -- you get your answers.

Farrell Court Reporting

Carmen Borges

Page 149

1 Q. So you said until you get your answers or at
2 least to that effect or until you get the perspective,
3 something to that effect?

4 A. You know, it's -- it's -- being in academia for
5 me and -- and from I wanna say from other generations,
6 communication and freedom of speech and freedom of -- it's
7 a right that you have. You need to -- you need to
8 understand concepts. You need to -- you need to know what
9 is it that it's talking about before attacking them
10 because you need to understand it. So it was for him
11 totally within his right to go and clarify what is -- why
12 are we discussing this within our writing program? What
13 is it that we need to be doing differently, changing or
14 whatever.

15 What's the message here? That was the big
16 mystery in all of the topics there. What do we need to be
17 learning?

18 Q. And it was your impression that Zack Di Piero
19 didn't understand Asao Inoue?

20 A. He -- he -- he didn't agree and didn't wanna go
21 beyond that, yeah. He didn't wanna go beyond an academic
22 discussion.

23 Q. You know whether Liliana Naydan by having these,
24 quote, discussions was trying to implement this as a

Carmen Borges

Page 150

1 program in the writing department?

2 MR. SMITH: Objection to form.

3 THE WITNESS: No, I have no knowledge of
4 implementing it. It's -- it was -- it was an
5 educational -- educational discussions about ways to do
6 things differently. What my understanding had been was
7 that somebody had said or there was knowledge that the
8 minority students or the multicultural students were
9 failing entire -- so it's what do we need to be doing
10 differently to reach that population and address it. That
11 was the gist of -- of having those type of discussions.

12 BY MR. ALLEN:

13 Q. And just backing up and asking a question again,
14 is it your understanding that my client, Zack Di Piero,
15 didn't understand Asao Inoue because he didn't agree with
16 him?

17 MR. SMITH: Objection to form.

18 THE WITNESS: Not because he didn't agree. He
19 didn't wanna -- he didn't want to go beyond. Yeah. He
20 didn't want -- he was opposing that topic within the
21 writing program.

22 BY MR. ALLEN:

23 Q. Do you think he might have opposed it because he
24 did understand Asao Inoue?

Carmen Borges

Page 151

1 A. He -- the topic was -- I mean, if you go to the
2 meeting and engage in conversation and put your -- your
3 views across and see what comes out of it, you know,
4 and --

5 Q. Does that include asking critical questions?

6 A. Of course.

7 Q. So Zack Di Piero had the right to ask critical
8 questions of every one of those meetings?

9 A. Absolutely.

10 Q. And just because they were voluntary didn't
11 divest him of that --

12 A. No.

13 Q. -- right?

14 A. He had a right to clarify, criticize, oppose, get
15 feedback. I mean, that's what the whole thing was about
16 or the idea of it.

17 Q. And raising critical questions like that couldn't
18 be considered a microaggression, right?

19 MR. SMITH: Objection to form.

20 THE WITNESS: It depends on -- on how you do it.

21 BY MR. ALLEN:

22 Q. How would you recommend to Professor De Piero
23 that he raise critical questions in these meetings
24 organized by Liliana Naydan?

Farrell Court Reporting

Carmen Borges

Page 152

1 A. Well, like anybody else in that group that was --
2 that were discussing the topic. That's -- you know,
3 people were there open to give examples, give ideas,
4 discuss things.

5 Q. Would it be proper to engage the actual text,
6 like quote it?

7 A. Say that again?

8 Q. Would it be proper to engage the actual text by
9 quoting it?

10 MR. SMITH: Objection to form.

11 THE WITNESS: Engage meaning?

12 BY MR. ALLEN:

13 Q. Sure. Strike that question. This is a perfect
14 example of asking me when I'm not clear.

15 Would a proper question, a proper critical
16 question in these meetings organized by Liliana Naydan
17 have been to read the text closely by Asao Inoue that has
18 been provided by Liliana Naydan? Would that be proper?

19 MR. SMITH: Objection to form.

20 THE WITNESS: Well, the meeting had an agenda and
21 had some books, specific books to discuss. That was not a
22 meeting for it -- you know, it was pretty structured
23 with -- with the topics for discussions, with ideas to
24 share -- share opinions and ideas about ways of doing,

Farrell Court Reporting

Carmen Borges

Page 153

1 treating students or whatever.

2 BY MR. ALLEN:

3 Q. So to read that text, would that be
4 inappropriate? To read that text in the meeting, is that
5 inappropriate?

6 A. Not to read the text, no, to question the text
7 and ask questions.

8 Q. After you review it?

9 A. That's what he should do, and that's what the
10 meetings -- the meetings were for to share information and
11 ask questions and share. Yeah.

12 Q. If you ask questions that other members of the
13 audience said they found interesting, would that be an
14 indication that the program was functioning as you would
15 want an academic program to function?

16 A. If you provide examples of what you do or the
17 faculty?

18 Q. If another faculty member in that meeting
19 expressed the view that Zack's questions were interesting,
20 does that somehow indicate that they were inappropriate?

21 A. No.

22 Q. It indicates the opposite, right, that they were
23 good questions, correct?

24 A. It could have been. It's -- it's just how the

Carmen Borges

Page 154

1 questions were being phrased and asked. That's a matter
2 of how.

3 Q. How would they be phrased and asked in a way that
4 indicated they weren't proper? Give me -- give me
5 examples of what you would expect to be improper ways of
6 asking these questions.

7 A. Well, if you go back to the -- to my
8 investigation of that matter, when I interview the rest of
9 the people that were there, everyone there was reported
10 that the tone and manner was very inappropriate.

11 Q. Including Matt Rigilano?

12 A. In many witness, everybody -- everybody agree
13 that it was a tense meeting. Zack was injecting himself
14 and not waiting for other people to give an answer,
15 insisting he wanted Lila to answer him, answer his
16 question, so that came across. I mean, that's what I
17 heard from the people at the meeting.

18 Q. Is it wrong to insist that someone answer your
19 question when you ask them a direct question?

20 MR. SMITH: Objection to form.

21 THE WITNESS: It depends how you do it. Again,
22 it depends.

23 BY MR. ALLEN:

24 Q. What does it depend on?

Farrell Court Reporting

Carmen Borges

Page 155

1 A. It depends on tone and manner.

2 Q. What should his tone have been if he asked direct
3 questions of Liliana Naydan --

4 A. Collegial --

5 Q. -- who assigned the reading?

6 A. Collegial and more engaged and collegial, not --
7 not come across like -- like what he was reported that
8 came across like -- like -- like upset, angry and -- and
9 aggressive. That's how it was described.

10 Q. What did you learn from your investigation?
11 Incidentally, when you say that manner, you're talking
12 about the August 18th meeting in which they discussed
13 something like beyond the color blind classroom, white
14 professors confront white privilege, something of that
15 nature?

16 A. Yeah.

17 Q. And there was a complaint filed against my client
18 by Liliana Naydan and Grace Lee-Amuzie directly after
19 that?

20 A. Exactly.

21 Q. Okay. And so in your investigation, what did it
22 reveal about the, quote, tone? How did Zack Di Piero
23 express the tone of anger?

24 A. Like he posed a question. And somebody would --

Farrell Court Reporting

Carmen Borges

Page 156

1 would wanna make a comment about it or answer him, that he
2 would say no, I'm asking Lila.

3 Q. He would say it in that tone of voice?

4 A. Uh-huh. That's what I heard from the witnesses.
5 I'm asking Lila. I want Lila to respond to me.

6 Q. And Lila Naydan and Grace Lee-Amuzie assigned the
7 reading, right?

8 A. It was distributed. Yeah, it was distributed
9 ahead of time, but they were, yeah. I guess -- I don't
10 know if it was an agreement amongst all of the faculty
11 there whether they agree, but it was a pretty structured
12 meeting. There was some -- some rules of behavior of all
13 that. It was pretty structured, and the topics.

14 Q. And did you find in your investigate that Zack
15 had raised his voice?

16 A. I heard from -- from the witnesses that his tone
17 was angry and -- and hostile, yes.

18 Q. And that's -- that's not in compliance with Penn
19 State's rules?

20 A. That is not in compliance with collegiality and
21 respect.

22 Q. Is it respectful to run around submitting
23 complaints particularly about your fellow faculty member?
24 Is that respectful?

Farrell Court Reporting

Carmen Borges

Page 157

1 MR. SMITH: Objection to form.

2 THE WITNESS: It doesn't have anything to do with
3 respect in the sense that I'm thinking. No.

4 BY MR. ALLEN:

5 Q. I'm gonna mark as Exhibit 13 a document with the
6 Bates number on the first page PSU 2572 dated September
7 13, 2021.

8 (Exhibit Borges 13 was marked for identification.)

9 BY MR. ALLEN:

10 Q. It's rather long. Do you recognize this
11 document?

12 A. Yes.

13 Q. What is this document?

14 A. This was Zack's complaint.

15 Q. And it came in on September 13, 2021?

16 A. Yes.

17 Q. Can you just describe what this format is? Just
18 describe the nature of the complaint document, if you
19 could.

20 A. This is a form, basically our office form.

21 Q. Is this submitted online by the complainant?

22 A. Uh-huh.

23 Q. I'm going to mark as Exhibit 14 some more
24 handwritten notes.

Farrell Court Reporting

Carmen Borges

Page 158

1 (Exhibit Borges 14 was marked for identification.)

2 BY MR. ALLEN:

3 Q. These are dated September 22, 2021. And again,
4 this is Exhibit 14 for the record. Are those your notes?

5 A. Yes.

6 Q. Ms. Borges?

7 A. Yes.

8 Q. And this is dated September 22, 2021, right?

9 A. Uh-huh. Yes.

10 Q. Was this the day of your discussion with Zack Di
11 Piero in connection with this complaint?

12 A. It sounds like it, yes.

13 Q. And of course, at the bottom of the first page,
14 it discusses his complaint that he's being subjected to
15 program -- writing program meetings in which are titled
16 things like white faculty are a problem, right?

17 A. Yes. That was one of them. I think then there
18 must have been once a month. Next month's writing program
19 agenda.

20 Q. And it says next month's writing program agenda
21 is on, quote, white privilege in the classroom, right?

22 A. Yes.

23 Q. And here, it says he does not agree, you say, or
24 understand the topic of the agenda, right? Is there

Carmen Borges

Page 159

1 anything in these notes that you now think is inaccurate?

2 A. What I -- what I could not understand is his
3 level of hostility and anger towards the topic and his
4 resistance to -- to -- to -- to discuss it or to -- or to
5 see, you know, what was this about.

6 Q. Were you aware that he engaged with the work of
7 Asao Inoue as a scholar of writing?

8 A. No, I wasn't aware of that.

9 Q. He does have a Ph.D in writing composition,
10 right?

11 A. Yeah. I'm aware of that.

12 Q. In fact, at the beginning of your notes, you say
13 he has a Ph.D, right?

14 A. Uh-huh. Yes.

15 Q. When did you get in contact with Liliana Naydan
16 about this complaint?

17 A. A month? I don't remember. I don't remember.

18 Q. Mark as Exhibit 15 an e-mail thread with the
19 Bates number PSU 03236. It's dated October 15, 2021, the
20 lead e-mail.

21 (Exhibit Borges 15 was marked for identification.)

22 MR. ALLEN: I'm sorry. Did I give you the wrong
23 one?

24 MR. SMITH: Which one --

Farrell Court Reporting

Carmen Borges

Page 160

1 MR. ALLEN: Can I have that one back? This is
2 the wrong e-mail. I apologize.

3 THE WITNESS: Yeah.

4 BY MR. ALLEN:

5 Q. I pulled up the wrong e-mail. So what I read
6 into the record is correct. This is a document with Bates
7 number PSU 3236. It's dated, but I got the date wrong.
8 That was the other one. This is October 12, 2021.

9 Do you see that in the header to this e-mail?
10 You recognize this e-mail, Ms. Borges?

11 A. I --

12 Q. And does this help refresh your memory about when
13 you scheduled a meeting with Liliana Naydan?

14 A. It sounds like, yeah, that's what I was after to
15 schedule a meeting with her.

16 Q. In this e-mail?

17 A. That's what it says.

18 Q. And were you able to schedule that meeting?

19 A. I would like to discuss this with you.

20 Q. Uh-huh.

21 A. Okay.

22 Q. Were you able to discuss that in the meeting with
23 Professor Naydan?

24 A. I don't recall that. I don't recall that.

Farrell Court Reporting

Carmen Borges

Page 161

1 Q. And you also say in this e-mail --

2 A. I'm contacting her to discuss this. Uh-huh.

3 Q. You also say no need to worry, correct?

4 A. Yeah.

5 Q. So already in contacting Professor Naydan, you
6 indicated to her that there was nothing to worry about,
7 right?

8 A. Um, let's see why I said that to her. I think
9 she was out sick at the time. I think Friederike may have
10 told me that she was out sick, some -- yeah. I'm not
11 clear, but --

12 Q. In fact, nothing did happen to her about Zack's
13 complaint, right? What's your answer?

14 A. No.

15 Q. No, nothing happened?

16 A. No.

17 Q. I'm sorry?

18 A. Nothing happened because she wasn't -- she wasn't
19 directing anything at him. This was an academic
20 discussion of -- of an important social problem.

21 Q. Is it what Penn State would call a national
22 dialogue on race?

23 A. No, no. I don't know if that was a thing going
24 on or what.

Farrell Court Reporting

Carmen Borges

Page 162

1 Q. I'm gonna mark as Exhibit 16 an e-mail thread
2 with the Bates number ZDP 055, and this one is dated
3 October 15, 2021.

4 (Exhibit Borges 16 was marked for identification.)

5 BY MR. ALLEN:

6 Q. Do you recognize this e-mail thread?

7 A. Yes.

8 Q. And at this time, October 15, 2021, it's over a
9 month since Zack submitted his complaint, right? You'd
10 like to schedule a time to discuss with him where you are
11 in that investigation, right?

12 A. Uh-huh.

13 Q. That's the only investigation at that time
14 involving Zack Di Piero, correct?

15 A. It's his complaint.

16 Q. Dating back to September --

17 A. The one in September. Uh-huh.

18 Q. And that was the complaint submitted as -- you
19 discuss some times to meet. Later, he sends you some
20 additional information. But we're into later in October,
21 right? Also interestingly, I'm just gonna direct your
22 attention to the last e-mail in the thread. You see
23 there's some attachments there?

24 A. Yes.

Farrell Court Reporting

Carmen Borges

Page 163

1 Q. This wasn't the first time you had heard about
2 this?

3 A. Well, not these other ones you included here,
4 huh? Yeah. But the issue of the police officer?

5 Q. Yes. These attachments are --

6 A. Yeah.

7 Q. -- to the police officer introduction and an open
8 reply to Sharon Holt, right?

9 A. Uh-huh.

10 Q. I'm not asking you to testify about those
11 attachments 'cause they're not included in this exhibit,
12 so just to be clear for the record. But they refer to an
13 incident involving Sharon Holt and police officer
14 introductions, right?

15 A. Yeah.

16 Q. But this isn't the first time you had heard about
17 the police officer introductions?

18 A. No.

19 Q. Incidentally, did you schedule an actual meeting
20 to discuss his complaint with him after this October 15th
21 e-mail?

22 A. Yes, because there are some times here that he
23 offers, so we must have -- yes, we must have had a -- we
24 must have scheduled a meeting. That was the purpose of

Carmen Borges

Page 164

1 the communication.

2 Q. Do you know which one of those dates you had a
3 meeting with Zack about his complaint? Not what happened
4 afterwards, but his complaint?

5 A. Is there an e-mail about that? No? But I did --
6 I did meet with him.

7 Q. Okay.

8 A. Uh-huh.

9 Q. So it's your testimony today that you met with
10 him about exclusively his complaint?

11 A. His complaint. Yes.

12 Q. Now, of course, this was October 15, 2021,
13 correct?

14 A. Yeah.

15 Q. That's the date?

16 A. Uh-huh.

17 Q. What happened three days later on October 18,
18 2021? Is that firm in your mind what happened three days
19 later?

20 A. Yes. That was the meeting, the incident of the
21 meeting.

22 Q. Describe what you know of that meeting on October
23 18, 2021.

24 A. Well, I got a complaint from -- from Lila and a

Carmen Borges

Page 165

1 complaint from Grace about what happened in that meeting.

2 They both filed complaints.

3 Q. Grace Lee-Amuzie and Lila Naydan filed complaints
4 against Zack Di Piero?

5 A. Uh-huh, right after the meeting.

6 Q. When did they file those complaints?

7 A. The meeting was the 18th, so they probably same
8 day or the next day. It was very close.

9 Q. And what did you do after that?

10 A. Well, I did that investigation. I talked to the
11 people that were in that meeting.

12 Q. And in Exhibit 15, you were organizing at least
13 as late as October 12, 2021 an interview with Professor
14 Naydan concerning Zack's complaint, right?

15 A. Yeah. Yeah. There's that e-mail. I'm drawing a
16 blank on -- on if I met with her because I know she was
17 sick, but it just don't come to mind my meeting with her.

18 Q. Did you ever have that meeting with her about
19 Zack's complaint because this was only a couple days
20 later, right?

21 A. Uh-huh. Uh-huh. I can't recall if I -- if I --
22 if I met with her about Zack's complaint.

23 Q. And of course, this e-mail to Liliana Naydan in
24 Exhibit 15 of October 12, 2021, that was almost a month

Farrell Court Reporting

Carmen Borges

Page 166

1 after Zack's complaint, right?

2 A. Yes.

3 Q. Now, fast forward to October 18th. You said they
4 submitted a complaint the day of or the next day, right?

5 A. Uh-huh.

6 Q. I think we're up to 17. Am I right, Matt? I'm
7 gonna mark as Exhibit No. 17 a packet of documents with
8 the lead Bates number PSU 2537 of various dates.

9 (Exhibit Borges 17 was marked for identification.)

10 BY MR. ALLEN:

11 Q. The caption of this document, at least the lead
12 page, is quotes for discussion from the myth of the color
13 blind writing classroom, white instructors confront white
14 privilege in their classrooms. Did I read that right?

15 A. Uh-huh. The thing was considered in that
16 meeting.

17 Q. Now, I'm gonna represent to you that these are
18 all in a series, the page numbers in the Bates production.
19 And I'm just gonna give you an opportunity to look at
20 that, and the question is going to be is this the
21 complaint filed by -- well, there are two complaints.

22 Are these the papers that constitutes the
23 complaints by Liliana Naydan and Grace Lee-Amuzie against
24 Zack Di Piero?

Carmen Borges

Page 167

1 A. The complaint was about the disruption, Zack's
2 disrupting the meeting and the tone of asking questions.
3 That was the -- the nature of the -- of their complaint.
4 It wasn't about the topic or anything further other than
5 how the conversation developed there.

6 Q. Well, I'm not --

7 A. Yeah.

8 Q. Maybe that truly is. I just want to ask the
9 question. If you look at page PSU 2539?

10 A. Uh-huh.

11 Q. See at the top says --

12 A. That's her complaint. That's Liliana's
13 complaint.

14 Q. So it says complaint information?

15 A. Uh-huh.

16 Q. And this is another one of the forms that your
17 office has --

18 A. This is our form, our office form.

19 Q. And this will -- I'm hoping this will go a little
20 faster if we --

21 A. Yeah.

22 Q. I'm talking over you, and I apologize.

23 A. No, no, no. I know time is of the essence.

24 Q. If I can get through the question --

Farrell Court Reporting

Carmen Borges

Page 168

1 A. Yes.

2 Q. -- and you answer back --

3 A. Okay.

4 Q. -- it'll create a clean record. Thank you. And
5 what's the date on this complaint form?

6 A. October 18, 2021.

7 Q. And do you see it says I am -- under number one,
8 it says explain what has occurred?

9 A. Uh-huh.

10 Q. And she writes I am writing to report an
11 egregious incident of bullying by Zack Di Piero in a
12 writing program meeting that I cofacilitated on October
13 18, 2021 from 12:15 on 1:15 on Zoom. Grace Lee-Amuzie, a
14 woman of color, and I planned the meeting together. Did I
15 get that right?

16 A. Uh-huh.

17 Q. She also says for the meeting, Grace and I asked
18 faculty to read an academic book chapter titled the myth
19 of the color blind classroom, correct?

20 A. Correct.

21 Q. Now, the document that starts this packet, if you
22 flip back a page?

23 A. Uh-huh. This --

24 Q. Are those the selections that they --

Farrell Court Reporting

Carmen Borges

Page 169

1 A. Yeah.

2 Q. -- gave in that presentation?

3 A. That was what was selected to discuss in that
4 meeting.

5 Q. And Grace Lee-Amuzie and Liliana Naydan,
6 according to her complaint, selected these, correct?

7 A. With some of the other faculty that gave input.

8 Q. Does it say that anywhere in this bullet point
9 number one or number one? Does it say this was selected
10 with all the faculty?

11 A. No, it doesn't say.

12 Q. In fact, it says we, meaning Grace Lee-Amuzie and
13 Liliana Naydan, chose this article because it provides a
14 basic introduction to antiracism work in the field of
15 writing studies, right?

16 A. Uh-huh.

17 Q. So again, I guess Penn State's position is that
18 you can have a meeting in which in you target an entire
19 race for racial discrimination, but it's okay if it's
20 voluntary --

21 A. It's a topic.

22 Q. -- is that so?

23 MR. SMITH: Objection to form.

24 THE WITNESS: It's a topic.

Carmen Borges

Page 170

1 BY MR. ALLEN:

2 Q. If no one has to be present for harassment of
3 someone on the basis of race, it doesn't count as
4 harassment? Is that your testimony?

5 MR. SMITH: Objection to form.

6 THE WITNESS: This is a topic of discussion.
7 This was an academic paper, an academic work that was
8 gonna be discussed.

9 BY MR. ALLEN:

10 Q. Is it permissible to be critical of these ideas?

11 A. Yes, in a respectful manner. The only -- the
12 problem here to summarize it is that the way he -- he --
13 he -- he was forcing, he was expressing himself that came
14 across as disruptive and unprofessional. And that was
15 the -- that was the end of that.

16 Q. So it's not unprofessional to harangue white
17 people as a race, right?

18 MR. SMITH: Objection to form.

19 BY MR. ALLEN:

20 Q. It's unprofessional to ask questions about it in
21 some kind of aggressive tone?

22 MR. SMITH: Objection to form.

23 BY MR. ALLEN:

24 Q. That's your testimony?

Carmen Borges

Page 171

1 A. It's about the tone and manner, yes. You can ask
2 any question in -- in -- in a respectful manner. But what
3 happened here, it was only the tone and manner.

4 Q. Did you find as part of your investigation that
5 Zack had used some kind of aggressive body language as
6 well?

7 A. Maybe they experienced that, but --

8 Q. You didn't tell Zack in a meeting with him that
9 he had used aggressive body language?

10 A. Well, that was what was reported.

11 Q. So that's something you claim to have learned in
12 your investigation, right?

13 A. From this -- yes, from this complaint.

14 Q. Do you know where in this complaint that it says
15 anything about Zack making gestures, body language,
16 anything of that nature?

17 A. Report an egregious incident of bullying. That's
18 how it sounds.

19 Q. Sure. I understand she thinks these things are
20 egregious.

21 A. And that's what she reported, and that was what
22 was confirmed by the people in attendance there.

23 Q. My question is very different.

24 A. Uh-huh.

Farrell Court Reporting

Carmen Borges

Page 172

1 Q. Where in this complaint, either by Liliana Naydan
2 or Grace Lee-Amuzie, do they claim that Zack made
3 aggressive gestures, used aggressive body language,
4 anything offensive about his gestures or body language?
5 Where in here are they complaining about that?

6 A. I'd have to read it all, but it starts at the
7 beginning.

8 Q. I just wanna focus on body language and gestures.

9 A. Soon after Grace read the first quote, Zack used
10 hostile tone to express concern about the topic of
11 conversation and the reading.

12 Q. Does that say anything about --

13 A. He said he wasn't sure why we were reading this
14 article because it claimed -- he asked whether this is a
15 good article for professional development. He took
16 particular issues with this line.

17 Q. Is that in -- first of all, two questions, but
18 let's take them in order. That quote that seems to be
19 highlighting, is that your highlighting or Lila Naydan's
20 highlighting?

21 A. The underlining?

22 Q. Yes.

23 A. Yes, that's mine.

24 Q. And there's like a bracket in the margin. Do you

Farrell Court Reporting

Carmen Borges

Page 173

1 see that? Those are all yours?

2 A. Yeah, those are all mine.

3 Q. Just to be clear.

4 A. Yeah.

5 Q. And is that quote misquoted somehow by Zack Di
6 Piero?

7 A. This is what was discussed.

8 Q. That comes from the --

9 A. In constructing social inequities, we remain
10 unaware and hereby unwittingly to reproduce racist
11 discourse and practices in our classrooms. He took
12 particular issue with that line is what it says.

13 Q. And does anything in that passage that you just
14 read -- this is my second question -- accuse Zack Di Piero
15 of making rude gestures?

16 A. No.

17 Q. Anything about his body language in that passage?

18 A. He criticized individuals instead of ideas,
19 specifically me and Grace for selecting this reading and
20 developing professional opportunity. He repeatedly called
21 out our names, asking us to answer his question and saying
22 he wasn't -- he wasn't interested in making remarks to
23 engage in discussion for discussion's sake. He spoke
24 inflammatory language, intimidating, intimating that Grace

Carmen Borges

Page 174

1 and I were involved in illegal activity that discriminates
2 against white people as a protect class. He dominated the
3 discussion and spoke more than anyone else.

4 About 15 minutes into the meeting, I said I felt
5 uncomfortable, and he mocked me, observing that the whole
6 point of antiracist dialogue is to feel uncomfortable.
7 Moreover, he made assumptions and generalizations. Yeah.
8 Yeah, I think in that group, it kind of -- kind of
9 explains the behavior he exhibited in the meeting.

10 Q. So my question was very different, and it's
11 actually very simple.

12 A. Uh-huh.

13 Q. And it will be a lot faster if we can just focus
14 on the question I asked. Where in what you just read to
15 me are they accusing him of using inappropriate body
16 language, inappropriate gestures, rude gestures with
17 his --

18 A. Right there in what I just read. That's what --
19 that's --

20 Q. Point specifically to where they talk about
21 his --

22 A. He spoke -- he spoke inflammatory language.

23 Q. Is that about his body? That says his language,
24 right? That doesn't say body.

Carmen Borges

Page 175

1 A. He spoke inflammatory language.

2 Q. Does that say he --

3 A. Well --

4 Q. -- flipped them off?

5 A. -- then the witnesses say he was adamant. It was
6 the adamancy of the -- about -- about -- about
7 questioning.

8 Q. That's namely in his tone, right?

9 A. His tone and -- and his hand gestures, I --

10 Q. Where does it say hand gestures?

11 A. The witnesses said.

12 Q. So you got that from witnesses?

13 A. That they were -- they had to intervene to -- so
14 he could back off and they would give him an answer. And
15 he would say no, I'm not asking you. I'm asking Lila. So
16 all that was happening in -- in a kind of a heated as it
17 was described in a heated -- a heated manner.

18 Q. Okay. Can you --

19 A. It was only --

20 Q. I'm sorry. Go ahead.

21 A. To the point that, I mean, it sounds like that
22 meeting only lasted 15 minutes. 15 minutes -- no, 15
23 minutes into the meeting. I said I was -- I felt
24 uncomfortable. So it had only been 15 minutes when the

Farrell Court Reporting

Carmen Borges

Page 176

1 meeting was going on that things were heading in the wrong
2 direction and Lila, I felt un -- and he mocked me.

3 Q. Do you recall Liliana Naydan telling another
4 faculty member at Penn State University that it was okay
5 to feel uncomfortable in these discussions about race,
6 right? Those were her words, right?

7 A. Yes.

8 Q. In this complaint, it's somehow not okay to feel
9 uncomfortable?

10 A. The whole point of --

11 Q. Is that --

12 MR. SMITH: Objection to --

13 THE WITNESS: The whole point of antiracist --

14 MR. SMITH: -- form.

15 THE WITNESS: Is to feel uncomfortable.

16 BY MR. ALLEN:

17 Q. That's what my client's discomfort, right?

18 A. Uh-huh.

19 Q. Is that an incorrect characterization of what
20 we've heard Liliana Naydan write to other professors at
21 Penn State in the past?

22 A. I guess it would have depended on the tone of the
23 seriousness of the tone that was used from there. I know
24 things went really bad there, and -- and the meeting

Farrell Court Reporting

Carmen Borges

Page 177

1 ended.

2 Q. You think the meeting ended right after that?

3 That's the impression you got from your investigation?

4 A. That's the impression I got, that it ended early.

5 Q. Do you think it's possible that professors in the
6 writing program lie to you when they talk to you in their
7 interview?

8 MR. SMITH: Objection to form.

9 THE WITNESS: I don't know. I -- I -- I wouldn't
10 know. I felt that they were describing -- describing what
11 was happening in the meeting, including one that said I
12 tried to save the situation by telling Zack okay, yeah,
13 this is the answer, whatever. And Zack would say no, it's
14 not -- you know, I'm not asking you. I'm asking Lila. So
15 you can imagine how the meeting was -- what's happening.
16 And all the others felt that, you know, uncomfortable.
17 There was a lot of silence and very -- yeah.

18 BY MR. ALLEN:

19 Q. Is it professional to be asked a question as a
20 grown up professor of writing and composition about
21 reading that you assigned and not to answer the question?

22 MR. SMITH: Objection to form.

23 THE WITNESS: Again, it's the tone. I guess
24 she -- she -- it's the tone and the manner in which he

Carmen Borges

Page 178

1 asked her that that she -- she didn't --

2 BY MR. ALLEN:

3 Q. So let's look forward. I just wanna call your
4 attention back to this document. It's -- there's a page
5 2541. You see that? It's got a lot of blacked out stuff
6 on it.

7 A. Uh-huh.

8 Q. I don't know why this is blacked out, but we're
9 just gonna --

10 A. Yeah. Who blacks that out?

11 Q. Your counsel.

12 MR. SMITH: We did produce unredacted versions of
13 all these documents as well.

14 MR. ALLEN: I'm not seeing --

15 MR. SMITH: I just wanted you to be aware that
16 there are unredacted copies.

17 MR. ALLEN: Can we go off the record a second?

18 (A discussion was held off the record.)

19 BY MR. ALLEN:

20 Q. So do you see in the second paragraph that begins
21 on that page Liliana Naydan in her complaint of October
22 18, 2021 is referring to an anonymous report about Zack in
23 late March 2021?

24 A. Where, and what page is that?

Carmen Borges

Page 179

1 Q. Just let the record reflect that I'm pointing
2 with my pen, but not marking on the document.

3 A. Okay. Okay. Yeah.

4 Q. So this is material in her own words from that
5 this is all microaggressions complaint back in March 31st
6 of 2021, right?

7 A. Uh-huh.

8 Q. By the time we get to October, that's already
9 seven months in the rear-view mirror, right?

10 A. Yes.

11 Q. Is it accurate to say that the material that you
12 can read in these various bullet points that follow spring
13 forward that original March 2021 microaggressions
14 complaint?

15 A. Spring forward in terms of how she's mentioning
16 it.

17 Q. She's repeating, I guess --

18 A. She's mentioning -- mentioning that she had
19 reported him before.

20 Q. I strike my question. I just wanna ask the
21 following.

22 If you examine the bullet points here, doesn't
23 this repeat the allegations made in the March 31st
24 microaggressions complaint?

Carmen Borges

Page 180

1 A. Yes.

2 Q. But earlier, you testified that Professor Naydan
3 didn't want those things investigated, right?

4 A. Correct.

5 Q. So by the time we get to October, now she does
6 want them investigated, correct?

7 A. Correct.

8 Q. And was this part of your investigation?

9 A. No, I didn't go back to those, to the March 2021.
10 Nuh-uh.

11 Q. I just want to skip forward to 2547, if you
12 could. It's page 11 of this series. I believe there's
13 another complaint?

14 A. Uh-huh.

15 Q. And I just wanted to verify that this is a
16 complaint dated October 19, 2021 by Grace Lee-Amuzie?

17 A. Uh-huh. Yes.

18 Q. And then she writes on the Bates number page 2548
19 explain what occurred which leads you to believe that you
20 have been subject to discrimination, right?

21 A. Right.

22 Q. And it says I and my colleagues, Lila Naydan,
23 cofacilitated a conversation about an article on
24 antiracism pedagogy for the writing program at Penn State

Carmen Borges

Page 181

1 Abington, right?

2 A. Right.

3 Q. The only colleague she mentions is Lila Naydan,
4 correct?

5 A. Correct. Oh, yes, for coordinating -- oh, no,
6 cofacilitated the conversation. But it -- it doesn't say
7 that they were the only two that determined the topic
8 or --

9 Q. But it doesn't mention anyone else as
10 facilitating the conversation?

11 A. Cofacilitated the conversation. It means
12 referring to that meeting.

13 Q. Correct.

14 A. Uh-huh.

15 Q. And then, it goes on. Writing program
16 instructors were invited, not required to join the
17 conversation. The Zoom conversation was organized in
18 collaboration between the writing program and academic
19 integration for multilingual student success and was part
20 of the ongoing efforts for diversity, equity and inclusion
21 in both programs. Did I read that right?

22 A. Uh-huh.

23 Q. So it was your understanding after reading this
24 complaint that this writing program meeting was part of a

Carmen Borges

Page 182

1 common effort for diversity, equity and inclusion in
2 multiple programs, right?

3 A. I just read that there. I didn't really -- I
4 didn't dig into that any further.

5 Q. I'm gonna mark as Exhibit 18 a series of
6 screenshots, and I'm going to represent that the first
7 Bates number is 1546, and they are screenshots of the
8 October 18, 2021 writing program meeting.

9 (Exhibit Borges 18 was marked for identification.)

10 BY MR. ALLEN:

11 Q. Now, I apologize in advance. My co-counsel and I
12 have commiserated about this, but the Bates numbers are
13 very tiny. And if you need -- I don't know how to rectify
14 that, but it's as hard on my eyes as it is --

15 A. You can read it first.

16 Q. I'll try to pull them. Now, I understand this is
17 not going to be a complete set of every minute of the
18 meeting. But as you review those, can you point out
19 anyone who is using aggressive body language?

20 A. No.

21 Q. How would you characterize the way my client,
22 Zack Di Piero, looks in these pictures?

23 A. Nothing special, I mean.

24 Q. Does he look angry?

Farrell Court Reporting

Carmen Borges

Page 183

1 A. Not angry.

2 Q. Does he look aggressive? Does he look different
3 from anyone else who appears in these pictures other than
4 he's a unique individual?

5 A. Yes.

6 Q. Incidentally, on the first couple of pages there,
7 do you see a chat window open to the right side of these
8 documents, Exhibit No. 18?

9 A. That's the same picture, huh?

10 Q. It's a little different.

11 A. Oh, well.

12 Q. At least --

13 A. Yeah, it's a little --

14 Q. We seem to have lost Steven Cohen.

15 A. -- mouth. I don't know. And Grace also doesn't
16 have her hand on her mouth. All -- all their hands are
17 down except Carolyn's.

18 Q. We can agree that we hope never, ever to be
19 completely exposed for how we look during Zoom meetings, I
20 think. But I just wanna ask you about the side bar. Do
21 you understand that although Zoom has a chat function --

22 A. Yes.

23 Q. -- you can post things during the meeting and so
24 forth?

Carmen Borges

Page 184

1 A. Uh-huh.

2 Q. Me represents Zack Di Piero. See the blue
3 bubbles?

4 A. Uh-huh.

5 Q. What is that? What is that as you understand it?

6 A. I mean, you --

7 Q. What is he posting there as you understand it?

8 A. I can't -- I can't read anything.

9 Q. Well, let me -- let me read it because it may be
10 that I understand it. Maybe that --

11 A. Okay.

12 Q. -- you're not able to.

13 A. You've already figured it out.

14 Q. The top blue bubble --

15 A. Uh-huh.

16 Q. On screen, I can expand it, unfortunately. I
17 wish I could do that for you.

18 A. Oh, I see. Okay.

19 Q. That's all. I'm just gonna -- and your counsel
20 can correct me if he thinks I'm reading it wrong. In the
21 top blue bubble --

22 A. Uh-huh.

23 Q. -- it says without attending to issues of
24 inequality, ellipses, we, ellipses, reproduce racist

Carmen Borges

Page 185

1 discourses and practices in our classroom. The second
2 blue bubble says once white instructors begin to identify
3 how whiteness operates in their own lives, they can begin
4 to deconstruct how white privilege operates within their
5 writing classrooms.

6 Did I read that correctly, so far as you can
7 tell? I understand it's very small.

8 A. Uh-huh.

9 Q. So I'm gonna read -- I'm gonna just represent to
10 you that that is -- that those are quotes from the reading
11 material that the focus was for these provided in the
12 quotes.

13 Is there anything improper about reading that in
14 the chat?

15 A. No.

16 Q. I'm gonna mark as Exhibit 19 a document with a
17 Bates number PSU 03154 with the lead e-mail date
18 4/24/2023, but bear with me. That seems unusual, but I
19 think you'll see why in a second.

20 (Exhibit Borges 19 was marked for identification.)

21 BY MR. ALLEN:

22 Q. Let me ask if you if you recognize this document.

23 A. Yes.

24 Q. So let's concentrate on the lead e-mail first. I

Carmen Borges

Page 186

1 just have a few questions on that. Who is Lonnie Albaugh?

2 A. Lonnie is from our office, and he's the person
3 that responds to PHRC complaints. They file complaints.

4 Q. Do you know if he's a practicing attorney?

5 A. He's an attorney, but not practicing solo.

6 Q. Is he doing legal work for the University of Penn
7 State?

8 A. No. He's just like a --

9 Q. You're telling me he responds to PHR --

10 A. Pennsylvania Human Relations Commission, the
11 state agency.

12 Q. What does that agency do?

13 A. They investigate complaints against --

14 Q. And do they enforce the laws of Pennsylvania
15 against discrimination in the workplace?

16 A. (Indicating.)

17 Q. Your testimony today is that Lonnie Albaugh, who
18 is an attorney, is not acting as an attorney when he does
19 that?

20 A. No. He's responding to a complaint, to a request
21 for information from the PHRC.

22 Q. Do you know if he's passed the bar?

23 A. I'm not sure, not clear on that.

24 Q. Do you know if he's licensed to practice in the

Farrell Court Reporting

Carmen Borges

Page 187

1 state of Pennsylvania?

2 A. The position does not require.

3 Q. So why are you sending this attachment to Lonnie
4 Albaugh?

5 A. Because he was responding to the -- the complaint
6 of the agency. Zack filed a complaint with the -- the
7 Human Relation Commission. And so Lonnie responds, and he
8 did respond to -- to the -- to that complaint.

9 Q. Were you otherwise involved in responding to the
10 Human Rights --

11 A. No.

12 Q. -- Commission complaint?

13 A. No.

14 Q. Are you involved at all in responding to an EEOC
15 complaints made by Zack Di Piero?

16 A. No.

17 Q. Are you aware that Zack had complained about
18 being discriminated against?

19 A. To an outside agency?

20 Q. To the PHRC as --

21 A. No. I wasn't aware of those complaints, no.

22 Q. And why did you retain notes of your
23 investigation against Zack in these --

24 A. That's what was asked of me. That's what -- it

Carmen Borges

Page 188

1 may have been that that's what he was responding to at the
2 time.

3 Q. And I'm getting ahead of us. These attached
4 notes that you referred to as scratchy notes, is that
5 accurate? I like that, by the way. That was very
6 endearing. These are the scratchy notes of what?

7 A. Of the -- the people that were at the meeting.

8 Q. Which meeting?

9 A. At the meeting of October 18th, the Zoom meeting.

10 Q. The one about confronting the --

11 A. The discussion about that topic, yeah.

12 Q. Okay. So I wanna turn to the notes now. On
13 October 20, 2021, you appear to have taken notes on an
14 interview of Steven Cooks?

15 A. Cohen.

16 Q. Cohen.

17 A. Uh-huh.

18 Q. I'm sorry. That it was on October 20th?

19 A. Yes.

20 Q. By Zoom?

21 A. Uh-huh.

22 Q. Does Steven Cohen say at any point in your
23 notes -- let me ask this more specifically. Your notes
24 reflect that Steven Cohen said in the meeting that Zack

Carmen Borges

Page 189

1 asked interesting questions?

2 A. Discussion didn't go far. One remember clearly
3 discontent with the material, very angry, would describe
4 it as conduct that combative on controversial topic,
5 disagreement. Zack was aggressive. That's a quote.
6 Never experienced that here. No intellectual debate.
7 Tried to de-escalate the conversation. One of them said
8 that what if we took race out of -- out of it and say
9 gender. Zack was angry, hostile, not appropriate way to
10 talk to colleagues. They were unprofessional. Lila said
11 at one point I'm really uncomfortable. Carolyn wanted to
12 know of behaviors we could do in the classroom. Yeah, not
13 quite.

14 Q. So he never says in those notes -- at least you
15 apparently didn't record that he said in your interview
16 with him that he said in the meeting that Zack's questions
17 were interesting?

18 A. (Unintelligible.)

19 Q. And in what you just read, there's also nothing
20 about Zack displaying aggressive body language, is there?

21 A. Well, Zack was aggressive. That's as close as
22 that gets.

23 Q. But it doesn't say anything about body language,
24 does it?

Carmen Borges

Page 190

1 A. No, it doesn't, but it's expressions, facial
2 expressions. I mean, we're semantics here, but --

3 Q. Do you consider --

4 A. I --

5 Q. -- saying something aggressive body language? Is
6 that a reasonable way in your view as an officer of the
7 affirmative action office to interpret --

8 A. Very angry. Okay. So, you know, with this
9 description, he would describe him as combative --
10 combative, you know, disagreements and very, very
11 aggressive. He was aggressive.

12 Q. So combative and very angry, these kind of
13 things --

14 A. How do you do those things?

15 Q. How did you --

16 A. How do people -- how do you people -- how do
17 people physically come across when they are describing
18 that?

19 Q. Did anyone ever describe Zack as flipping off the
20 cofacilitators?

21 A. Well, at the point when -- you know, not using
22 those words, but insisting that Lila answer his questions,
23 yes. He did -- it wasn't like, you know, he posed a
24 question and -- and others could jump in and give him --

Farrell Court Reporting

Carmen Borges

Page 191

1 give him some ideas or some answers. At this point, he
2 said no, I'm asking Lila. I want Lila to answer this.

3 Q. And that in your mind is aggressive and hostile?

4 A. Not in my mind. In their description, it was.

5 Q. The next page, there's a 10/22/21. It says
6 Carolyn Esposito. Do you see that?

7 A. Uh-huh.

8 Q. She was in the meeting as well on October 18,
9 2021?

10 A. Yes.

11 Q. In your notes, does it reflect that she also said
12 Zack's questions were interesting in the meeting?

13 A. Tension when she arrive. Notice one faculty seem
14 upset. Campus what -- people different. Yeah. Article
15 in the meeting. There is faculty on the -- yeah.

16 Q. So anything in there about Zack's body language
17 or gestures?

18 A. Only that the meeting was tense and that she
19 noticed that Zack seemed upset, so --

20 Q. Is it against Penn State's rules to be upset by a
21 paper in which you're accused of being the problem as a
22 white person? You wouldn't expect a Black person to just
23 sit there and not be upset by such a topic that was
24 labeled Black people are the problem, would you?

Farrell Court Reporting

Carmen Borges

Page 192

1 MR. SMITH: Objection to form.

2 BY MR. ALLEN:

3 Q. Would you expect that, that a Black person would
4 be upset by a paper called Black people are the problem at
5 Penn State?

6 A. Yes.

7 Q. So going on to the next 10/21/2021, there's a
8 Matt Rigilano entry in your notes, right?

9 A. Uh-huh.

10 Q. Can I ask you to examine those notes, please?

11 A. Uh-huh. So this is where the question he made,
12 referring to Zack. He said so if we don't address
13 inequities in the classroom, does that mean we are racist?
14 Matt said -- Matt said let me look at it, like he tried to
15 answer that. That's the one that then Zack said well, I'm
16 asking Lila and Grace how to respond. They didn't. Lila
17 says she felt uncomfortable. Yeah, that's the one.

18 Q. And that's against Penn State's rules to --

19 A. No.

20 Q. -- expect the director of a program and the
21 organizer of a workshop to answer a question? Is that
22 your testimony today?

23 A. It's not against the rules, no.

24 Q. But it's all about the tone?

Farrell Court Reporting

Carmen Borges

Page 193

1 A. It's unprofessionalism.

2 Q. It's unprofessionalism? So it is --

3 A. Collegially. No, no. That's -- no. It's common
4 collegiality, common sharing of information and
5 interactions.

6 Q. Isn't it --

7 A. Sharing ideas, yeah. It's --

8 Q. Under the Penn State values that you referred to
9 before? Is that --

10 A. Under the Penn State values, exactly.

11 Q. Is it unprofessional to ignore a question posed
12 to you by a colleague?

13 MR. SMITH: Objection to form.

14 THE WITNESS: No. I mean, it is -- it is --

15 BY MR. ALLEN:

16 Q. I'm sorry. What do you mean by no? It is not
17 unprofessional or it isn't?

18 A. It isn't unprofessional. It's just what it was
19 explained here. It was the state of the emotional state
20 in which Lila was falling into that didn't --

21 Q. Is it unprofessional to get upset when someone
22 challenges your workshop topic?

23 A. Again, it all depends on how the challenge --
24 how -- how is it challenged because that's what

Farrell Court Reporting

Carmen Borges

Page 194

1 academicians do all the time, challenging each other and
2 discussing things among each other, but it all comes down
3 to how that's done.

4 Q. Now, I believe I may have asked this, but you'll
5 have to forgive me if I have. Does Matt Rigilano in your
6 notes, your notes record that Matt Rigilano said that Zack
7 was making rude gestures, aggressive body language,
8 anything of that nature?

9 A. I'd say no.

10 Q. So I wanna go to --

11 A. I think it was in the -- at the moment when he
12 posed the question and Matt wanted to take the question
13 because Matt -- the way he explain it, things were getting
14 tense. And when the question was posed of Lila, and he
15 tried to step in to say well, let me -- let me answer.
16 And that's when Zack said I'm asking Lila and Grace to
17 respond.

18 Q. You've already testified that that's not
19 necessarily unprofessional, right, to want the organizers
20 of a program --

21 A. It depends. Again --

22 Q. -- to answer questions.

23 A. -- it depends on the tone.

24 Q. Sure.

Farrell Court Reporting

Carmen Borges

Page 195

1 A. If you're saying in -- you know, in an
2 aggressive, high tone, it is. It's -- it's offensive.
3 It's inappropriate, let's say. There's no rule against
4 it, but it's --

5 Q. And I'm just trying to go through witness by
6 witness, right?

7 A. Yeah.

8 Q. So we're at 10/20/2021. It's Grace Lee-Amuzie at
9 the top. Do you see that page?

10 A. Yeah, Grace.

11 Q. And of course, you've already testified that
12 she's a professor in the English program?

13 A. Uh-huh.

14 Q. And she was the co-facilitator in her own words
15 in her complaint?

16 A. I don't -- I'm not sure if she's in that English
17 program. She may be in another department. Uh-huh.

18 Q. And I'll just give you a chance to review your
19 notes about your conversation with her.

20 A. Yes, bring that to the -- as a topic of
21 discussion.

22 Q. Sure. On the second page of her note, that would
23 be -- excuse me, the Bates number PSU 2533, right?

24 MR. SMITH: I'm sorry. Maybe I'm off.

Carmen Borges

Page 196

1 BY MR. ALLEN:

2 Q. Strike that. It would be Bates number PSU 3161;
3 is that right? It says Grace didn't, comma, couldn't
4 respond. Didn't know what to do. There was silence,
5 right? That's about five lines down, six lines down. The
6 one that said Grace didn't, comma, couldn't respond,
7 didn't know what to do.

8 A. Okay.

9 Q. Did I read that right?

10 A. Yes.

11 Q. And again, I'm not trying to --

12 A. Grace --

13 Q. -- mischaracterize your notes. I really am not.

14 A. Grace didn't, couldn't respond. Didn't know what
15 to do. There was silence. Some of the men responded, but
16 Zack kept asking and saying this is a question for Lila
17 and Grace. He said this -- he said this is illegal. It's
18 illegal discrimination based on race. Participants trying
19 to have a productive conversation. Lila and her responded
20 when someone else spoke or was a response to the other
21 person. This is all what Grace was saying.

22 Q. Sure.

23 A. He's clearly not happy with the approach of DEI
24 at the campus. She and Lila were frozen. Others were

Carmen Borges

Page 197

1 doing what they could to keep the conversation productive.
2 There was male faculty said -- but other male faculty said
3 he was intentionally misleading the text, referring to
4 Zack. Lila was visibly shaken, said -- said it in the
5 meeting. Zack said well, discomfort is part of the --
6 part of the what?

7 Q. Okay. This is not about trying to make --

8 A. Okay.

9 Q. -- can't read your own notes --

10 A. Discomfort is part of the disconnection or
11 this -- this discussion.

12 Q. Can I back up and ask you a question about her
13 statement that some of the men responded, right? That's
14 what you recorded in your notes?

15 A. Uh-huh.

16 Q. Now, your notes don't reflect that Carolyn
17 Esposito also commented, right?

18 A. Commented, but she wasn't that involved in -- in
19 trying to step in and make, give a response like some of
20 the -- some of the guys, like.

21 Q. And that's the impression that Grace Lee-Amuzie
22 gave?

23 A. And some of the others.

24 Q. So the impression is that Zack was somehow

Farrell Court Reporting

Carmen Borges

Page 198

1 silencing women?

2 A. Steven -- not silencing women, but putting --
3 putting Lila on the spot.

4 Q. Well, sure. They organized the program, right?

5 A. But again, it was the way he was throwing things
6 at them that -- that kind of set the tone for that meeting
7 and --

8 Q. Was that --

9 A. It wasn't -- it wasn't a productive meeting like
10 it was intended for academic, intellectual discussion of a
11 topic. The meeting was confrontational, aggressive in
12 many ways. I'm asking Lila. I'm not asking you, you
13 know.

14 Q. That's the tone that --

15 A. That's the tone I got the impression and that the
16 meeting ended earlier and that Lila and Grace were -- were
17 in pieces, devastated.

18 Q. If you go back to I think it's Exhibit 18.
19 That's the one with the pictures, right? Now, again, I
20 know this is really small. But you see it sort of begins
21 around 12:18 with Liliana Naydan posting -- this is the
22 thread on the --

23 A. Oh, the picture.

24 Q. -- right sidebar?

Carmen Borges

Page 199

1 A. Oh, okay.

2 Q. See how it begins with Lila Naydan, some kind of
3 thread at 12:18, a link probably to this document. I
4 don't know. Then, there's some -- Liliana Naydan posts at
5 12:19 various rules of the road in the white bubble. Do
6 you see that?

7 A. I can see --

8 MR. SMITH: Are you on the second page? 'Cause
9 my first page cuts off and doesn't have the dates, just so
10 that I'm looking at the right page.

11 MR. ALLEN: That's a good point. This would be
12 the second page which has the Bates number 1547, ZDP 1547.
13 I'm happy to show the witness a picture of this, if you
14 don't mind, since I have --

15 MR. SMITH: That's fine. If you have the page,
16 that'll be helpful.

17 MR. ALLEN: I'll give it to your counsel, and
18 this will be -- and I don't mean to hover over you. I
19 just wanna --

20 THE WITNESS: No, no, no.

21 BY MR. ALLEN:

22 Q. I wanna show you that the meeting basically --
23 this thread -- and I would assume this is not the very
24 beginning of the meeting. But it starts at 12:18, right?

Carmen Borges

Page 200

1 A. Uh-huh.

2 Q. And the last one, someone is saying -- someone is
3 signing off. Sorry.

4 A. Who can see your --

5 Q. Got to go, right?

6 A. Sorry. I got to go. And that's --

7 Q. That seems to be Steven Cohen?

8 A. Uh-huh.

9 Q. And that's at 1:15?

10 A. Okay.

11 Q. 1:14, to be exact, right?

12 A. Okay. And it started at 1:19?

13 Q. Well --

14 A. 12:00, 12:00.

15 Q. So just for the record --

16 A. It wasn't 15 minutes.

17 Q. It was starting probably around 12:00, right?

18 But there's this post at 12:18. And then, it seems like
19 someone leaves, perhaps.

20 A. Uh-huh.

21 Q. We don't know if it's the first. But people are
22 beginning to wind up at 1:14 p.m., right?

23 A. Yes.

24 Q. Doesn't that indicate that the meeting went for

Farrell Court Reporting

Carmen Borges

Page 201

1 an hour and 15 minutes?

2 A. Those meetings are the -- I think they were
3 scheduled for -- for that time. Or it went. It went on.

4 Q. That doesn't seem to be that it ended early then,
5 did it?

6 A. No.

7 Q. Let's see. There's another -- the last -- if I'm
8 not mistaken, the last set of notes are at 10/19/2021.
9 Jumping back for the record to Exhibit No. 19, we'll go to
10 the -- I believe it's the last set of notes, the few pages
11 with the heading 10/19/2021, Lila Naydan at Zoom. Do you
12 see that?

13 A. Which one?

14 Q. 19 --

15 MR. SMITH: Back to the --

16 THE WITNESS: This one?

17 MR. SMITH: -- one we had a moment ago.

18 THE WITNESS: No, this is 17.

19 MR. SMITH: Your notes, interview notes. I think
20 it's the one in front of --

21 THE WITNESS: Oh, this one. Okay. Yes.

22 BY MR. ALLEN:

23 Q. So if you go to the last two pages, I believe,
24 we'll get this done.

Farrell Court Reporting

Carmen Borges

Page 202

1 A. Okay.

2 Q. And we can put these things --

3 A. I know. We're going crazy here.

4 Q. I'm sorry to drag you through these. But you can
5 understand as the record of the investigation --

6 A. Absolutely. Uh-huh.

7 Q. So these are your notes of an interview with Lila
8 Naydan on 10/19/2021, right?

9 A. Uh-huh.

10 Q. And could you review these notes really quickly?

11 A. Okay. This is challenges with Zack for the last
12 two years. She -- this is her. She had learned that Zack
13 had issues with a woman he reported to previously at the
14 University of Pennsylvania. She is referring to Lila when
15 she was hiring him. She didn't check references or
16 background when she hired him. Has been a challenge, has
17 been challenging her since a complaint of bias was filed
18 by a student in his class. She told him that a bias
19 complaint was filed and they needed to meet with him
20 division head Friederike to discuss it.

21 Zack showed up with a pack of e-mails to prove he
22 was not racist. He then learned that the complaint was
23 based on age. He was a returning adult student who was
24 Black, and he assumed the complaint was about race. That

Farrell Court Reporting

Carmen Borges

Page 203

1 incident damaged the working relationship between them,
2 Lila and Zack. That was two years ago. Since then, he
3 has been openly challenging her on everything. There was
4 an incident yesterday in a meeting to discuss an article
5 on antiracism pedagogy for the writing program.

6 Yeah, this is where she put -- because
7 apparently, you know, she did hire him and they had a good
8 working relationship. And at some point, this is where
9 she -- she believes he began to distrust her when this
10 incident of a student.

11 Q. In your experience when professors are accused by
12 a student of discrimination, don't you expect them to try
13 to prove that they're not discriminatory?

14 A. Of course. The thing is that he didn't know what
15 the basis was, and what she's saying that he assume it was
16 race. I mean, if the student is Black, I mean, that would
17 be the obvious. There's an assumption.

18 Q. And it was that she did know he was accused of
19 discrimination?

20 A. That the student had filed a discrimination
21 complaint against him.

22 Q. And it wasn't a random accident that he came in
23 and tried to prove that he wasn't racist with regard to
24 this student, correct?

Carmen Borges

Page 204

1 A. Exactly.

2 Q. And the finding of the university is that it
3 wasn't discrimination?

4 A. He wasn't found -- it wasn't -- it wasn't about
5 race.

6 Q. I'm going to interject. Do you mean age?
7 Because I think --

8 A. Oh, age. Age. Sorry. Yes.

9 Q. And again, I'm not trying to --

10 A. No, no. It was age. It was a returning adult
11 student who we call the older students.

12 Q. So in the complaint we read earlier that was
13 Exhibit 17, Liliana Naydan's formal complaint of
14 discrimination against my client, Zack Di Piero, do you
15 remember that beginning with this was an egregious act of
16 discrimination? She used the word egregious, right?

17 A. The complaint from the student.

18 Q. No.

19 A. Yeah, that's what I mean.

20 Q. Had experienced the egregious discrimination --

21 A. Oh, herself?

22 MR. SMITH: Objection to form.

23 BY PROSECUTING ATTORNEY:

24 Q. We can go read it.

Carmen Borges

Page 205

1 A. Well, I think she was referring to the whole
2 thing, the -- all the -- all the things that she's talking
3 there, not once incident.

4 Q. But if we go back to the complaint information
5 report, and this is Exhibit 17, the first number one, what
6 she writes under number one is -- and this is on page PSU
7 2539, Exhibit 17?

8 A. Okay. Of 17?

9 Q. It's the packet --

10 MR. SMITH: The one right there.

11 THE WITNESS: Oh, this?

12 BY MR. ALLEN:

13 Q. It's the packet --

14 A. Okay.

15 Q. -- of complaints.

16 A. Exactly.

17 Q. So I think if you turn to the third page, which
18 would be perhaps --

19 A. Uh-huh.

20 Q. It's where the complaint begins, the formal
21 complaint. You see where it says number one, explain what
22 has occurred?

23 A. The beginning of the --

24 Q. This is how she describes the incident. I am

Carmen Borges

Page 206

1 writing to report an egregious incident of bullying by
2 Zack De Piero in a writing program meeting, right?

3 A. Uh-huh.

4 Q. So now, I just wanna flip back. I'm sorry.
5 You're gonna get whiplash. I know.

6 A. She -- she has the timing here. 12:15 to 1:15.
7 Yeah. Okay. So that was an hour meeting.

8 Q. I'm just curious. In your interview with her on
9 10/19/2021, that was the next day, right?

10 A. The next day.

11 Q. It seems you spent most of the time -- at least
12 your notes reflect most of the discussion was about issues
13 that didn't even involve the October 18, 2021 meeting,
14 right?

15 A. That she went into summarizing the whole, her
16 whole experience with -- with Zack from the beginning.

17 Q. Including these issues in March that --

18 A. Yeah.

19 Q. -- you said she didn't want investigated?

20 A. Yeah, exactly.

21 Q. And she suddenly did?

22 A. Yeah. She kind of said this is -- this is the
23 person that I have been having problems with for the last
24 two years, and these are all the things that have

Farrell Court Reporting

Carmen Borges

Page 207

1 happened.

2 Q. This was three days after you had contacted her
3 to schedule a meeting concerning Zack's complaint against
4 her, right?

5 A. Double check on that. You know, double check
6 my -- that meeting. I don't have any --

7 Q. In Exhibit 16 showed that you reached out on --

8 A. Yeah.

9 Q. -- October 15, 2021 --

10 A. Uh-huh.

11 Q. -- to schedule a meeting with Liliana Naydan
12 about the Zack Di Piero complaint?

13 A. Oh, yeah. It was -- yeah.

14 Q. And three days later, she submitted a complaint
15 against Zack, right?

16 MR. SMITH: Did you say Exhibit 16?

17 MR. ALLEN: I believe Exhibit 16 is ZDP 055.

18 MR. SMITH: I have an objection to form, then. I
19 guess from my notes, I have that was an e-mail to Zack,
20 not to Lila.

21 MR. ALLEN: I think you are right and -- oh, I'm
22 sorry. I think it's -- I think it's -- your objection is
23 very well put, and I apologize.

24 BY MR. ALLEN:

Carmen Borges

Page 208

1 Q. Ms. Borges, I apologize. I had been meaning
2 Exhibit 15, which is PSU 03236. And again, I have to
3 retract my few questions because this one is dated October
4 12, 2021. My point is you were trying to organize a
5 meeting with her on October 12, 2021?

6 A. Uh-huh. I wonder if we got to do it. I wonder
7 because then, this happened, so --

8 Q. So when you were going to interview her
9 concerning that meeting, you started her complaint --

10 A. Well, the incident happened, the incident of the
11 meeting of the 18th.

12 Q. Right.

13 A. Well, and some of the other people -- some of the
14 others were saying -- and actually, the only thing that he
15 was -- excuse me -- found responsible for was for --
16 for -- for being inappropriate, being not collegial or
17 disrespectful or any other thing that is not any -- I
18 mean, the code of conduct that talks about respect.

19 Q. Right.

20 A. That was -- that's only thing, and that's not a
21 big deal of being found guilty of anything.

22 Q. He was found guilty of disrespect. Is that your
23 position?

24 A. Uh-huh. Uh-huh.

Farrell Court Reporting

Carmen Borges

Page 209

1 Q. So I'm gonna give you -- actually, it's almost
2 5:00, and I understand it's getting late.

3 A. We need to --

4 Q. No, no. That's already a foregone conclusion.
5 Do we wanna take a break before I go into -- I think we'll
6 be able to wrap it up relatively quickly, but it's really
7 up to you.

8 MR. SMITH: I will have maybe 10 minutes at the
9 end, 15 at the most.

10 (A break was held.)

11 BY MR. ALLEN:

12 Q. We're almost to the end, and I wanted to say
13 something about the next exhibit because its designation
14 is a little bit -- I don't want there to be confusion on
15 the record. So this is a recording of the actual meeting
16 of October 18, 20 --

17 A. And by the way, I wanted to mention --

18 Q. -- 2021.

19 A. -- I did not give any permission to record. We
20 never, ever in our office have any issues with recording
21 because we don't -- we don't allow the recording.
22 Actually, we have had some complainants that say well, if
23 I can't record, then we can't talk. I say well, then we
24 can't talk.

Farrell Court Reporting

Carmen Borges

Page 210

1 Q. Why don't you allow them to be recorded?

2 A. Because that's illegal in Pennsylvania.

3 Q. It's not if you get consent, correct?

4 A. If you get consent --

5 Q. Why don't you give consent?

6 A. We don't give consent.

7 Q. Why not? Is that your policy?

8 A. No, no.

9 Q. It's the policy of the university?

10 A. Not the university, either. In our office. And
11 my understanding is in other offices that we interact and
12 talk that it's not --

13 Q. Is it because Penn State employees want to
14 represent things on the record that they know the record
15 that's audio recorded doesn't confirm?

16 MR. SMITH: Objection to form.

17 THE WITNESS: No.

18 BY MR. ALLEN:

19 Q. So this exhibit doesn't involve a recording of
20 you. This record is marked ZDP Exhibit 43. It was
21 introduced at the deposition of my client, Zack De Piero,
22 at least in excerpts or clips, all of them being
23 designated Exhibit 43. I say that, Ms. Borges, only to
24 make clear that some of the documents are Bates stamped

Farrell Court Reporting

Carmen Borges

Page 211

1 ZDP --

2 A. Recording --

3 Q. -- X, Y and Z. This recording, I mean something
4 different when I say ZDP. It has been marked as ZDP
5 Exhibit 43 because it was introduced at Zack Di Piero --
6 and those are his initials -- deposition and it was given
7 the number Exhibit 43, just to be clear so it's not
8 confused with the Bates stamp.

9 A. But you're referring to a recording?

10 Q. I am. And I'm gonna play clips of that.

11 A. Okay.

12 Q. Obviously, if I could give it to you as a
13 document, I would. But instead, we're gonna hear it. I'm
14 hoping that it will be loud enough to be picked up. I'm
15 gonna ask for your patience because it takes me some time
16 to navigate to different clips.

17 So the first one is about 18 minutes and 19
18 seconds. It is the first time that my client, Zack Di
19 Piero, speaks in the meeting. I'll just represent that.
20 Your client -- excuse me, your attorneys can check that.
21 If it's untrue, they'll have ample opportunity to point
22 that out to the judge. And of course, neither they no I
23 want to be caught before a federal judge misrepresenting
24 the record, and I'm grateful to your attorney for

Farrell Court Reporting

Carmen Borges

Page 212

1 correcting me, my mistakes in doing that. It begins here.

2 (Audio plays.)

3 BY MR. ALLEN:

4 Q. So that was Zack's first intervention in this
5 discussion. It lasts from about the time stamp 18:19 to
6 19:04, 19 minutes and 4 seconds. Can you explain to me
7 what in Zack's tone was aggressive that you just heard?

8 A. (Indicating.)

9 Q. What in Zack's tone was insulting?

10 A. I -- I didn't hear anything insulting.

11 Q. Given that you saw in the complaint that you
12 reviewed as the officer of the affirmative action office
13 Lila Naydan and Grace Lee-Amuzie's excerpts, do you
14 remember that in the past exhibit --

15 A. Uh-huh. Yeah.

16 Q. -- No. 17, did you heard any misreading of the
17 text by my client, Zack De Piero, in that statement?

18 A. Not in that statement. That wasn't the whole
19 meeting, though.

20 Q. Did you find that that was a harassing comment
21 for Zack to make?

22 A. I didn't quite hear it, to tell you the truth
23 completely. But what I heard did not sound --

24 Q. Well, for the purposes since you didn't hear it,

Farrell Court Reporting

Carmen Borges

Page 213

1 and I understand --

2 A. It's -- it's too low, the --

3 Q. I know, and I've got it turned up all the way.

4 Let me see if I can --

5 A. So this is the recording from the meeting? Is
6 that what you're representing?

7 Q. It is.

8 A. Uh-huh.

9 Q. And again, you weren't in the meeting, right?

10 A. No.

11 Q. So he was not recording you, correct?

12 A. No.

13 Q. Okay. I'll try to -- maybe we can get it --

14 (Audio plays.)

15 THE WITNESS: Who's speaking there?

16 BY MR. ALLEN:

17 Q. I would have to -- I don't know. I don't think I
18 can testify. If I knew, I would represent, but --

19 A. But it's not anybody from that meeting.

20 Q. Yes, it is.

21 A. Is it?

22 Q. Yes.

23 A. But there were only -- if anyone, it would have
24 been Carolyn.

Farrell Court Reporting

Carmen Borges

Page 214

1 Q. It may well be Carolyn Esposito.

2 A. Yeah.

3 Q. I mean, to me, it sounds like someone with a
4 Hispanic accent just as I hear it, heard it right then.
5 But I don't -- I can't --

6 A. Because the only women there were, you know, Lila
7 and Grace and Carolyn.

8 Q. Correct. And you know what Lila and Grace sound
9 like?

10 A. Uh-huh.

11 Q. And you think that voice was not either of them?

12 MR. SMITH: Did you have a start point? Because
13 this is a new clip from the one we just heard.

14 MR. ALLEN: No. She wanted to hear it again, but
15 I think I started at 18 minutes, 5 seconds. My skills in
16 navigating to the exact clip are plagued by fat fingers
17 and inexact touch pads.

18 THE WITNESS: You say that was not Lila? Are you
19 sure it wasn't Lila?

20 MR. ALLEN: I'm not -- I'm not testifying.

21 MR. SMITH: He's --

22 BY MR. ALLEN:

23 Q. I'm not testifying. I was trying to find out
24 what you know about it, but --

Farrell Court Reporting

Carmen Borges

Page 215

1 A. No.

2 Q. And you brought it up. I'm just playing through
3 this to get back to the clip. Here Zack will start next.

4 (Audio plays.)

5 BY MR. ALLEN:

6 Q. Were you able to hear it that time through?

7 A. Yeah. I heard it well.

8 Q. I want to then play forward from 19 minutes and 4
9 seconds and see what happens next. Okay?

10 (Audio plays.)

11 BY MR. ALLEN:

12 Q. That is the second intervention into the
13 conversation. Let me ask what about his tone was
14 harassing in that clip?

15 A. Nothing.

16 Q. Was it aggressive? Is it unprofessional to ask
17 the organizers of a meeting to answer that question?

18 A. Uh-uh.

19 Q. What was the answer given to Zack in that almost
20 45 seconds?

21 A. What was the answer?

22 Q. Yes. What answer did Grace Lee-Amuzie or Liliana
23 Naydan --

24 A. Do you have it recorded?

Carmen Borges

Page 216

1 Q. Well, we just listened to --

2 A. The question.

3 Q. -- approximately 18 minutes and 19 seconds
4 through 20 minutes and 8 seconds. Did you hear either one
5 of them provide any answer to that question?

6 A. But I don't know if it was not recorded. I don't
7 know if it -- if the recording was ongoing or -- or what
8 was recorded is only what Zack was saying. What was it?

9 Q. Well, let me represent to you that this is a full
10 recording that has not been edited.

11 A. From the whole meeting?

12 Q. Correct. And again, I can the truth and provide
13 this to you so you can listen to the whole thing.

14 A. Yes. Okay.

15 Q. It's been disclosed in discovery. So I'm not --
16 my purpose here is not to hide the ball. Because it's
17 such a long meeting, if we played it all, we'd be here for
18 an hour.

19 A. Okay.

20 Q. So I'm just trying to skip through and ask you
21 questions.

22 A. So in all the meeting, nothing has been --

23 MR. SMITH: I think I can help him clarify. I
24 think the question's specifically just about the clip,

Farrell Court Reporting

Carmen Borges

Page 217

1 just about -- not what happened at the rest of the meeting
2 is my understanding.

3 THE WITNESS: That clip. But at what point of
4 that was -- you know, we're not hearing the whole meeting.

5 BY MR. ALLEN:

6 Q. No, but for reasons I described.

7 A. But we have a --

8 Q. In this clip --

9 A. You have it recorded?

10 Q. Yes.

11 A. The whole meeting?

12 Q. We're gonna play some more.

13 A. Yeah.

14 Q. Again, I'm not trying to hide the ball from you.

15 A. No, no.

16 Q. And you can request your attorney to provide you
17 a listen, if you would like, to the whole thing. In fact,
18 I don't mind. If you insist, we'll play the whole thing.

19 A. No.

20 Q. But it will take us an hour --

21 A. Yeah.

22 Q. -- because it's an hour meeting. So all I mean
23 is from 18:19 to 20 minutes and 8 seconds, did you hear
24 Liliana Naydan or Grace Lee-Amuzie answer Zack's question?

Farrell Court Reporting

Carmen Borges

Page 218

1 A. No, not somehow recording it.

2 Q. Is that professional?

3 A. No.

4 Q. Now, I'm just gonna play again, and we'll listen
5 to the answer that Zack gets to his second intervention.

6 (Audio plays.)

7 BY MR. ALLEN:

8 Q. So there's a female contributor to the
9 conversation wondering about the same questions that Zack
10 raised, right?

11 A. Uh-huh.

12 Q. Did she sound like she was intimidated?

13 A. Uh-uh.

14 Q. Was she struck dumb suddenly by Zack's question?

15 A. Uh-uh. I mean, the --

16 Q. If you can identify her --

17 A. Yeah.

18 Q. -- from personal knowledge, because you did
19 interview her?

20 A. Uh-huh. Yeah.

21 Q. You could say, is that Carolyn Esposito?

22 A. It sounds like it.

23 Q. I'm gonna fast forward a little bit to 23:14

24 where my client also answers -- excuse me, asks or let me

Carmen Borges

Page 219

1 put it this way.

2 At the 23 minutes and 14 seconds stamp, my client
3 asks -- or excuse me, speaks again.

4 (Audio plays.)

5 BY MR. ALLEN:

6 Q. So that was a second time Zack asked a question.
7 What in his tone was harassing that you just heard?

8 A. Nothing.

9 Q. Anything aggressive?

10 A. No.

11 Q. Does that suggest to you that he was
12 gesticulating wildly?

13 A. I think he was articulating whatever -- whatever
14 he wanted to explore, but --

15 Q. And the woman who answered, was that Liliana
16 Naydan, that voice?

17 A. That's what I'm thinking. It sound, yeah.

18 Q. And if you're not sure, it's okay --

19 A. I'm not sure. I was trying to, yeah.

20 Q. So let's skip forward to 24:05 and my client
21 speaks again.

22 (Audio plays.)

23 BY MR. ALLEN:

24 Q. If you want, I can play the clip immediately

Carmen Borges

Page 220

1 before that because he's responding to something as you
2 notes reflected that Professor Naydan said. Would you
3 like me to do that?

4 A. If you have the time, we can do it.

5 (Audio plays.)

6 BY MR. ALLEN:

7 Q. So that puts it more in context. I believe there
8 was a professor who said she feels uncomfortable?

9 A. Uh-huh.

10 Q. Did you find Zack's tone harassing in that
11 response?

12 A. No.

13 Q. Aggressive?

14 A. No.

15 Q. In any way unprofessional?

16 A. No.

17 Q. So we're gonna skip forward to 41 minutes and 10
18 seconds. Start here at 44 -- we'll start here at 43:55
19 and we'll come upon another time when my client speaks in
20 the meeting, which is approximately at -- I'm sorry. For
21 the record, we're gonna begin this clip at 40 minutes and
22 58 seconds.

23 (Audio plays.)

24 BY MR. ALLEN:

Carmen Borges

Page 221

1 Q. So are your answers the same to all the
2 questions --

3 A. What was the answer to that? Do you have it?

4 Q. Yeah. We can listen to it by all means.

5 (Audio plays.)

6 THE WITNESS: Another of the guys answer that.

7 BY MR. ALLEN:

8 Q. I can represent that that's Matt Rigilano who we
9 deposed and also testified to this.

10 A. Okay.

11 Q. So was there anything in my client's tone that
12 was aggressive?

13 A. No.

14 Q. Can you say that for the --

15 A. No. I mean --

16 Q. Was there anything in my client's tone that was
17 harassing that you just heard in that clip?

18 A. No.

19 Q. I'm just gonna represent to you that he doesn't
20 speak in the meeting until 45 minutes and 16 seconds, so
21 I'm gonna try to fast forward there.

22 (Audio plays.)

23 THE WITNESS: That's Carolyn.

24 BY MR. ALLEN:

Carmen Borges

Page 222

1 Q. So then the conversation goes on, but let's focus
2 on how Zack De Piero, my client, intervened in the
3 discussion at that time. Was there anything in his
4 intervention during that last clip that you found
5 harassing?

6 A. No.

7 Q. Aggressive?

8 A. No, inquisitive.

9 Q. Did you consider his tone as you heard it today
10 professional?

11 A. It was.

12 Q. And you identified the professor who responded in
13 that brief clip as Carolyn Esposito?

14 A. More likely.

15 Q. Did that female professor you heard speak up, did
16 she sound intimidated?

17 A. No.

18 Q. I'm gonna skip forward now to the 49th minute, 49
19 seconds in.

20 (Audio plays.)

21 BY MR. ALLEN:

22 Q. So again --

23 A. That's one of the guys, huh?

24 Q. Correct.

Farrell Court Reporting

Carmen Borges

Page 223

1 A. Uh-huh.

2 Q. So in that clip from my client, Zack Di Piero, in
3 his intervention in the October 18, 2021 writing program
4 meeting, was he aggressive?

5 A. No, normal -- normal conversation. I mean,
6 normal asking a question.

7 Q. So my second question is also do you as an
8 officer of the affirmative action office consider that to
9 be harassing?

10 A. No.

11 Q. In fact, we just heard one of the male professors
12 say that he found the question interesting, right?

13 A. I didn't quite hear it. I mean, it'd be
14 interesting to hear the whole recording because these are
15 snip and pieces what you're -- you're presenting. So I
16 don't know if we're missing some areas that where he shows
17 some other tones that as I heard it from him and the guys
18 there.

19 Q. And I'm going to represent to you that I'm
20 showing you all the clips in which my client speaks. Of
21 course, the meeting goes for an hour. I'm excluding some
22 of the other stuff simply in the interest of time.

23 A. Uh-huh.

24 Q. You're, of course, invited to listen to the

Carmen Borges

Page 224

1 entire recording which has been produced in discovery.

2 There's one last time my client speaks at 51 minutes and
3 34 seconds.

4 (Audio plays.)

5 BY MR. ALLEN:

6 Q. So that's the last time my client intervenes in
7 the program meeting. Did you find what he said in that
8 clip to be harassing?

9 A. I find it deviating from the purpose of the
10 meeting as explained at the beginning of the meeting why
11 are we here for and the topics and the things that -- that
12 were to be discussed. I find his questioning totally
13 deviating from that.

14 Q. Was what he said an inaccurate --

15 A. Inaccurate?

16 Q. -- summary -- no, an inaccurate summary of PSU's
17 antidiscrimination policy?

18 A. It just completely deviates from the purpose
19 of -- of the academic discussion they were having. The
20 academic discussion was about --

21 Q. I'm gonna try to interrupt 'cause we're almost
22 done.

23 A. Yeah.

24 Q. The best part of the deposition is of course the

Carmen Borges

Page 225

1 end, right? But I wanna -- I want you to focus on my
2 question because what I'm asking was is what he said in
3 anyway inaccurate about the antidiscrimination policy of
4 Penn State University?

5 A. But we're talking about a research topic. We're
6 talking about -- we're talking about one particular -- one
7 focus. The focus of the discussion was -- was -- was --
8 it seemed deviating from the focus of the discussion
9 totally. That was -- that was discussed -- that was
10 presented as why are we here for. What are we talking
11 about? What do we have to learn and come out of this
12 discussion with? And what I hear Zack saying is totally
13 against moving forward on an academic discussion on a
14 serious social -- social program.

15 Yeah. He doesn't sound disrespectful. That, I
16 agree. But he sounds disengaged and he sounds --

17 Q. In the last clip or in all the clips?

18 A. Well, in the last one mostly.

19 Q. I just want us to be as specific --

20 A. Yeah, in the last --

21 Q. With that, please --

22 A. Yeah. The initial ones, he's asking questions
23 related more to the topic. It goes on into moving into
24 other areas totally out of the topic, and I think it may

Carmen Borges

Page 226

1 have been how things got out of -- out of -- out of focus
2 there.

3 Q. So I want you to answer the question that I've
4 asked you twice now.

5 A. Uh-huh.

6 Q. And what you said is now on the record. Is what
7 he said in that last clip a more or less accurate summary
8 of Penn State's antidiscrimination policy?

9 A. This is -- this is not -- this -- this was an
10 academic topic. This is not a specific -- see, the
11 problem here is that they're discussing an academic, an
12 academic research project based on -- based on an academic
13 discussion based on a social problem, a social issue.

14 Q. So yet you're not still answering my question,
15 which was very simple.

16 A. Uh.

17 Q. Which was is what Zack said in that last clip a
18 more or less accurate description of Penn State's
19 antidiscrimination policy? That's a yes or no --

20 A. Because what he's saying that it is
21 discrimination because the topic is about Black people.

22 Q. The topic wasn't about Black people.

23 A. Well, the topic is about people, yeah.

24 Q. The topic was about white people. Do you think

Carmen Borges

Page 227

1 the conversation in the room would have been very
2 different if the entire --

3 A. Yeah, but it's --

4 Q. -- for an hour, they were told to discuss
5 something that said Black teachers are the problem,
6 something preposterous like the Black teachers are somehow
7 the problem? What do you think the discussion would have
8 been?

9 A. Well, what we're missing -- what we're missing
10 here historical context. We're missing here the big
11 picture.

12 Q. You're aware that my client has sued Penn State,
13 correct?

14 A. I'm aware.

15 Q. And Judge Wendy Beetlestone, who is an immigrant
16 to this country from the nation of Nigeria, ruled that the
17 lawsuit could proceed, correct?

18 A. I don't know.

19 MR. SMITH: Objection to form.

20 BY MR. ALLEN:

21 Q. Are you aware of that?

22 A. No.

23 Q. Judge Wendy Beetlestone ruled that this claim of
24 discrimination against Penn State University for creating

Farrell Court Reporting

Carmen Borges

Page 228

1 a hostile environment cannot be dismissed for convenience
2 sake. And my question for you is is it inaccurate what
3 Zack Di Piero was discussing in the group that this kind
4 of constant bombardment of white people are the problem
5 type rhetoric could potentially create a hostile
6 environment?

7 MR. SMITH: Objection to form.

8 BY MR. ALLEN:

9 Q. Is he wrong about that, Ms. Borges?

10 A. Yeah, he may be wrong about that.

11 Q. And certainly Penn State is paying your attorneys
12 to make that argument, right?

13 MR. SMITH: Objection to form.

14 THE WITNESS: I think he -- I think he deviated
15 from the big picture of what -- what was to be discussed.

16 BY MR. ALLEN:

17 Q. You would agree with me that they were discussing
18 the condition of race in America, correct? And America's
19 antidiscrimination laws are part of the history of race in
20 this --

21 A. But that doesn't eliminate the fact, the need in
22 academia to discuss the problem.

23 Q. We are going to be here for a very long time if
24 you don't answer my questions.

Farrell Court Reporting

Carmen Borges

Page 229

1 A. Well --

2 Q. You're not answering the question.

3 A. I don't have an answer. I don't have an answer.

4 Q. That's fine. If you don't wanna answer a
5 question --

6 A. I don't have one.

7 Q. -- answer --

8 A. I don't have one.

9 Q. Okay.

10 A. Let's say that.

11 Q. But it would be -- just say that.

12 A. But what I'm trying to say is that there's
13 nothing wrong with the topic. And if anybody needed to be
14 sued, it's Asao, Asao.

15 Q. Inoue?

16 A. Inoue.

17 Q. All right.

18 A. Asao Inoue is the researcher. This is a topic
19 that he put out there, and there's nothing wrong with
20 picking up a topic at a university and -- and dissecting
21 it or talking about it.

22 Q. Is there --

23 A. They need to be --

24 Q. Let me ask a related question. Is there a rule

Farrell Court Reporting

Carmen Borges

Page 230

1 or policy or conduct code at Penn State University that a
2 program director shouldn't lie about one of their faculty
3 members?

4 A. It depends what the -- it depends, yeah.

5 Q. Is there a rule against submitting false
6 complaints against a fellow faculty member?

7 A. Well, no. I mean, because the person that files
8 a complaint believes in what -- you know, believes it's
9 not a false complaint, believes in the complaint. It's
10 proper.

11 Q. So do you think it's reasonable to say that Zack
12 Di Piero in those clips that you just heard was harassing
13 Liliana Naydan?

14 A. In the first line of questioning, asking
15 questions related to the topic, that was -- I think that
16 was appropriate. At the end when he's trying to say that
17 because we're talking about this, that's -- that's
18 against -- that's discrimination because we're talking
19 about this here, that totally turned the conversation. I
20 can see where that turned things around.

21 Q. But your own office and other offices on campus
22 have been promulgating a policy that if you see something,
23 say something, right?

24 A. We're talking academic. We're talking academic

Carmen Borges

Page 231

1 topics. We're not talking individual people telling each
2 other something. We're talking an academic research
3 project that's being discussed between academics in the
4 writing program, and it all had to do with writing
5 program.

6 Q. And isn't part of that allowing for criticism of
7 the viewpoints that are being discussed?

8 A. For discussion and criticism, yeah.

9 Q. How can a --

10 A. Disagreement.

11 Q. I interrupted you. I'm sorry.

12 A. Yeah. Other -- other researchers in disagreement
13 with that. Yes.

14 Q. Sure. So how can that honest conversation take
15 place when the criticism is met with complaints to your
16 office by your program director?

17 MR. SMITH: Objection to form.

18 THE WITNESS: But by the time that that
19 meeting -- by the time of the meeting, did Zack know
20 that -- that there was a complaint against him?

21 BY MR. ALLEN:

22 Q. No. She filed the complaint immediately after
23 the meeting, right?

24 A. Well, after, exactly. After based on the

Carmen Borges

Page 232

1 meeting.

2 Q. Do you think that is a professional thing to do
3 as a program director given what you just heard?

4 A. It's fine. People do that all the time. That
5 happens.

6 Q. Is it okay to lie about your fellow faculty
7 member and say he was aggressive, harassing?

8 MR. SMITH: Objection to form.

9 THE WITNESS: That was the perception. And I
10 don't know what happened -- you said you have the whole
11 recording, but her perception is that that's how he came
12 across -- across.

13 BY MR. ALLEN:

14 Q. Does her subjective feelings about that have to
15 be validated in your office?

16 A. No. We need to find the truth about it.

17 Q. But you actually didn't interview her about
18 Zack's complaint against Liliana Naydan, did you?

19 MR. SMITH: Objection to form.

20 THE WITNESS: Zack's complaint against Liliana.

21 BY MR. ALLEN:

22 Q. The September 13, 2021 complaint.

23 A. Oh, that complaint, because --

24 Q. That got derailed, right?

Farrell Court Reporting

Carmen Borges

Page 233

1 A. No --

2 Q. The --

3 A. Because that was a whole -- that I saw it as a
4 different thing. He was in disagreement with the topic in
5 itself.

6 Q. And you directed him to continue to go to these
7 meetings until he would --

8 A. No.

9 Q. -- understand the perspective?

10 A. Until he -- you know, it's an academic issue. It
11 is an academic discussion. And at the beginning when you
12 put that, he was, you know, kind of discussing it and
13 asking the right questions for an academic discussion. So
14 I was thinking okay, that's -- that's the way -- that's
15 the way to go. That's why I was -- this is why in his
16 complaint, what I thought is, you know, you have a right
17 to go and find, ask questions and you have a right to do
18 that, and that's what is done in academia, I mean.

19 Q. He was asking questions, right?

20 A. He was asking questions, and --

21 Q. And he was reprimanded afterwards, correct?

22 A. But I don't know -- I don't know how -- when the
23 meeting turned. When he began to say that this is
24 discrimination and against university policy, that's

Carmen Borges

Page 234

1 where -- that's where he -- things began to go wrong.

2 That's what deviated from the academic discussion.

3 Q. Okay. Let's listen -- since that's your
4 testimony -- and again, I represented to you that these
5 are the only times when he speaks in the meeting. There
6 were several. We got through them. This is what follows.

7 (Audio plays.)

8 THE WITNESS: This is Grace?

9 BY MR. ALLEN:

10 Q. Do you need us to go on, or is that sufficient
11 aftermath to convince you of the tenor of the conversation
12 after Zack stops speaking?

13 A. That was before or after?

14 Q. That was after Zack's last clip in which he
15 brought up the issue that they may be engaging in illegal
16 discrimination by constantly --

17 A. And she's --

18 Q. -- talking about white people being the problem.

19 A. And she's explain why she's doing this work.

20 Q. Is that somehow more appropriate to soliloquize
21 for six minutes about your family background in the
22 Ukraine than Zack's statement that this might be
23 actionable discrimination which led to an ongoing federal
24 lawsuit?

Carmen Borges

Page 235

1 MR. SMITH: Objection --

2 BY MR. ALLEN:

3 Q. That's your testimony?

4 MR. SMITH: Objection to form.

5 THE WITNESS: No. That's not --

6 BY MR. ALLEN:

7 Q. Are you aware that Grace Lee-Amuzie as reported
8 in your notes went on another soliloquy about her daughter
9 having her hair pulled back in gymnastics class?

10 A. Yeah. I heard that.

11 Q. Does that strike you as submitting to standards
12 of white beauty to have female athletes pull their hair
13 back when they're on balance beams and competing in
14 gymnastics? That's something that Grace Lee-Amuzie said
15 in this meeting. Is that somehow on topic where Zack's
16 comment about discrimination which led to a federal
17 lawsuit is not on topic?

18 A. I have to say that this is a very -- talking
19 about race and the history in this country of racial
20 slavery and racial discrimination, that's -- that's a
21 long, dark history and there's nothing wrong about
22 unpacking it and talking about it, and it happened to the
23 Black people. And so therefore, it has to be addressed
24 as -- as a Black issue, as talking about what happened to

Farrell Court Reporting

Carmen Borges

Page 236

1 the Black people in this country. And it happened based
2 on rogue laws and power that were at the time making
3 decisions, so I don't see anything wrong with talking
4 about that. That's not discrimination.

5 Q. Where in the clips we heard or any of that did
6 you hear discussion of Black people, Black history, all of
7 those topics you just raised?

8 A. Well, in the discussion of power, in the
9 discussion of power related to -- to the topic.

10 Q. Is that where -- I don't know who said that,
11 white people always have power over Black people or
12 something to that effect?

13 A. Well, I don't know -- I don't remember
14 specifically. But in the historically, it's about power
15 and -- and -- and --

16 Q. Incidentally, what does the history of national
17 socialism have to do with American slavery in the United
18 States which Liliana Naydan was going on about for about
19 fives minutes?

20 MR. SMITH: Objection to form.

21 BY MR. ALLEN:

22 Q. Can you explain that to me, please?

23 A. National socialism? I didn't capture that. What
24 is she talking about?

Farrell Court Reporting

Carmen Borges

Page 237

1 Q. She was talking about her camp that her --

2 A. Jewish?

3 Q. -- her relatives being put into concentration
4 camps or camps of some sort by the Nazis. You know that
5 Nazi stands for national socialists, right?

6 A. Yeah.

7 Q. So she's talking about the Nazis who are
8 admittedly a racist regime in another country, and I'm
9 asking you what that has to do with discussing race
10 relations in the United States.

11 MR. SMITH: Objection to form.

12 THE WITNESS: I guess power, if it's having
13 power, having power to do what you wanna do.

14 BY MR. ALLEN:

15 Q. And Zack's comment about discrimination law in
16 the United States doesn't have to do with power? Is that
17 your testimony today?

18 A. Individually, yes. In the context of -- of
19 analyzing a social problem, the social history is
20 different than an individual situation.

21 Q. The complaint lodged against Zack was against him
22 individually, wasn't it?

23 A. Well, the complaint was based on his behavior.
24 It wasn't based on his idea.

Farrell Court Reporting

Carmen Borges

Page 238

1 Q. We just reviewed his behavior, right?

2 A. Well, now, that's -- that's -- that was news to
3 me, the first part of the behavior. Although why do the
4 people there describe it in the way they did?

5 Q. Isn't the simplest explanation is they couldn't
6 tolerate someone who disagreed with them?

7 MR. SMITH: Objection to form.

8 THE WITNESS: What I mean, the other -- the guys
9 that were there and Carolyn. The way that they describe,
10 the tension and the way things were there, how -- where
11 does that -- how does that match if he behave in that tone
12 throughout?

13 BY MR. ALLEN:

14 Q. Given the any evidence that Liliana Naydan and
15 Grace Lee-Amuzie were lying about my client, do you intend
16 to open an investigation of them?

17 MR. SMITH: Objection to form.

18 THE WITNESS: They were lying? Why do you say
19 they were lying? I mean --

20 BY MR. ALLEN:

21 Q. They characterized this as aggressive. They
22 characterized this as harassment, right? Egregious
23 bullying. Was anything in what you listened to called
24 egregious bullying by Liliana Naydan qualify as bullying

Carmen Borges

Page 239

1 in your mind?

2 A. I would say the part where he was talking about
3 discrimination and questioning whether that was a
4 violation, that's where I would put that because that took
5 it out of the academic, intellectual discussion.

6 Q. I'm gonna introduce Exhibit 20 for the record, a
7 document that has the Bates stamp PSU 01281. It's dated
8 January 13, 2024.

9 MR. SMITH: We're just trying to make sure we
10 have the exhibits straight.

11 MR. ALLEN: Strike the entrance of Exhibit 20,
12 but recall that I introduced the exhibit which was the
13 audio recorded as ZDP Exhibit 43.

14 MR. SMITH: And we can go off the record if you
15 wanna --

16 MR. ALLEN: Can we go off the record briefly?

17 (A break was held.)

18 MR. ALLEN: This is a brief on the record
19 designation of exhibits for the purpose of clarity. The
20 audio clip of the October 18, 2021 meeting had been
21 designated at least in a partial clip in the deposition of
22 Zack Di Piero as ZDP Exhibit 43. It had also been
23 introduced at the deposition of Matthew Rigilano and given
24 a different exhibit number in that deposition, which can

Carmen Borges

Page 240

1 be found on the record of his deposition transcript. In
2 this deposition, we are going to designate the same audio
3 clip which has the native format and is Bates marked ZDP
4 03827 as Exhibit 20.

5 It is still the contention of the plaintiff that
6 these are the same recordings that were used and
7 introduced by the defendants in the deposition of Zack Di
8 Piero, only this is the whole complete audio recording of
9 the entire meeting and not simply a clip. In playing
10 clips for the witness, Carmen Borges, I have skipped
11 through the video in order to get to the clips that we
12 listened to.

13 (Exhibit Borges 20 was marked for identification.)

14 BY MR. ALLEN:

15 Q. Do you have any reason to suspect that I did not
16 do what I just said?

17 A. No.

18 Q. Okay. Just wanted to confirm. So we have that,
19 then. Now, I would like to introduce as Exhibit 21 for
20 the record -- again, to clear that up and I'm striking its
21 earlier designation, I'm introducing Exhibit 21, which is
22 marked with the Bates stamp PSU 01281. And it's dated
23 January 14, 2024, I believe. Did I get that right or am I
24 wrong?

Farrell Court Reporting

Carmen Borges

Page 241

1 A. '22, it says here.

2 Q. '22. You see? Now, I'm off my game and I gotta
3 get that --

4 A. It's getting late.

5 Q. I know.

6 (Exhibit Borges 21 was marked for identification.)

7 BY MR. ALLEN:

8 Q. So it is marked January -- it is designated
9 January 13, 2022 on the face of the document. Now, I
10 don't know if you recognize this document, Ms. Borges, so
11 I'm just going to ask you. Do you recognize this
12 document?

13 A. I think I've seen it. I don't why it was -- I
14 don't know where.

15 Q. Were you the author of this document?

16 A. Oh, no. Nuh-uh. This is Lisa's.

17 Q. Who is Lisa?

18 A. Lisa Marranzini is from HR.

19 Q. And you said you pronounced her name Marazini?

20 A. Marranzini.

21 Q. And she's from HR?

22 A. HR.

23 Q. Standing for human resources?

24 A. Human resource.

Carmen Borges

Page 242

1 Q. Do you know her specific title?

2 A. Yes. She has a high title there. She's the
3 overall human resources for the whole campus system at the
4 university.

5 Q. Not just Abington?

6 A. Not just Abington. The whole -- all the HR from
7 the campuses report to her.

8 Q. So it's your understanding that she drafted this?

9 A. Yes.

10 Q. Did you participate in its drafting?

11 A. No.

12 Q. Was it circulated to you at any time?

13 A. It may have been that she was, you know,
14 questioning about something.

15 Q. And based on your direct knowledge, do you know
16 what this was used for?

17 A. This was a letter given to Zack, huh?

18 Q. Well, I'm asking you. I don't know.

19 A. Yeah. That's what I believe it was about, the
20 letter of expectations.

21 Q. Okay. And --

22 A. Which was the only -- the only thing that --
23 that -- that was done as a result of all this.

24 Q. There's a paragraph with four highlighted words

Farrell Court Reporting

Carmen Borges

Page 243

1 in the middle of that first page. Do you see that?

2 A. Uh-huh.

3 Q. Are these the Penn State values --

4 A. Yeah.

5 Q. -- from that Penn State values statement?

6 A. Exactly.

7 (Exhibit Borges 22 was marked for identification.)

8 BY MR. ALLEN:

9 Q. And I'm gonna introduce as Exhibit 22 some
10 printouts from the Penn State web page.

11 A. Okay.

12 Q. And you'll see that these were accessed -- if you
13 look in the upper right hand corner, it says 6/12/24,
14 4:46 p.m.

15 A. Uh-huh.

16 Q. And then down at the bottom of the page, it --
17 actually in the lower left hand corner, it shows the URL
18 where these were accessed. Do you see that?

19 A. Uh-huh. I mean, the values are different, but
20 they may have -- they may have changed, if these are the
21 most current ones. Not to my knowledge, but this sounds
22 like the ones that are --

23 Q. Well, there's four values here, right, listed?

24 A. Integrity, respect, responsibility, discovery,

Carmen Borges

Page 244

1 excellence and community.

2 Q. So respect is listed here, correct?

3 A. Uh-huh.

4 Q. In Exhibit 22?

5 A. Yes.

6 Q. So is responsibility, right?

7 A. Yes.

8 Q. And excellence as well?

9 A. Yes.

10 Q. As well as community?

11 A. Exactly.

12 Q. To your knowledge, have those four values changed
13 at any time in the last two years?

14 A. No, not to my knowledge.

15 Q. At the time of your meeting with Zack in the
16 complaint of Grace Lee-Amuzie and Liliana Naydan against
17 him, were these values that are referred to in Exhibit 21
18 up on the website as well?

19 A. Yes.

20 Q. And if you skip down to page 3 of the website,
21 you see it begins with the little Nittany Lion and it says
22 respect, responsibility, discovery, excellence, community?

23 A. Uh-huh.

24 Q. Did I leave one off? In the nature of web pages,

Carmen Borges

Page 245

1 it just --

2 A. Yeah.

3 MR. SMITH: Integrity.

4 BY MR. ALLEN:

5 Q. For some reason, integrity doesn't seem to be on
6 this page, but we'll have a chance to look at it. In
7 fact, why don't we skip that part and we'll go to --

8 A. Respect, discovery, excellence and community,
9 yeah.

10 Q. Can you go to the seventh page of the exhibit?
11 It's this one you're looking for.

12 A. Exactly.

13 MR. SMITH: Blue page?

14 BY MR. ALLEN:

15 Q. It's a big blue page with Penn State values over
16 the header?

17 A. Exactly. This is it.

18 Q. And again, this is from Penn State's website
19 within --

20 A. Uh-huh.

21 Q. -- a couple weeks of this deposition. Okay?

22 A. Uh-huh.

23 Q. So did any of Zack's behavior that you just
24 listened to in the clip of the October 18, 2021 program

Carmen Borges

Page 246

1 meeting somehow not demonstrate integrity?

2 A. I think the only one that he -- it was respect.

3 The only one that he was told that he didn't live up to.

4 It was respect.

5 Q. Well, they listed these four values, right?

6 A. As a reminder of the values, but they only --

7 Q. In Exhibit 21?

8 A. But those are the -- as a reminder of the values,
9 but the one that he would have not follow was the only the
10 respect value.

11 Q. So as you understand it, he was only found
12 responsible for being disrespectful?

13 A. Exactly.

14 Q. And in your view, the clip that you listened to,
15 did that demonstrate disrespect?

16 Let me strike that question because there were
17 several excerpts. In the various times when Zack spoke
18 during the meeting, did he convey disrespect with his tone
19 of voice?

20 A. Not when he was asking questions.

21 Q. Did he convey disrespect by being aggressive?

22 A. Not when he was asking. I think he show
23 disrespect towards the end when he was confronting them
24 with what they were doing, that this -- you know, that

Carmen Borges

Page 247

1 this is illegal, you cannot be doing that. I think at
2 that point is -- is where the disrespect, the respect, the
3 disrespect happened.

4 Q. Don't you expect that in the office for civil --
5 excuse me, the affirmative action office of Penn State
6 University that in the defense of the Penn State
7 community, faculty will bring it to the attention of their
8 colleagues when they think they're violating the law?

9 A. I mean, you mean Zack bringing to their attention
10 that they were violating the law for discussing an
11 academic -- an academic work?

12 Q. Well, you talked a lot about Liliana Naydan's
13 subjective feelings, right? If she feels this was somehow
14 harassing, then it's worth I guess investigating, as far
15 as you're concerned?

16 MR. SMITH: Objection to form.

17 THE WITNESS: Yeah. Like anything else that we
18 need to investigate both. With anything, you know, we
19 need to investigate. People -- people say an allegation,
20 and we need to see if that -- if that's -- if that
21 happened or not or if that's any violation of policy.

22 BY MR. ALLEN:

23 Q. And you already just testified that you don't
24 think Zack was failing to display integrity, right?

Farrell Court Reporting

Carmen Borges

Page 248

1 A. Or respect, which is what is he was found that he
2 didn't follow with respect. And, you know, he sounded
3 like he was asking questions in a respectful manner. And
4 again, where I don't know what happened, but -- but
5 towards the end when he began to tell them you're doing
6 something illegal, that's where I think came out across as
7 a threat, and they weren't --

8 Q. Do you have any reason to believe that Zack
9 somehow was insincere in raising those allegations of
10 discrimination?

11 A. About them discussing this topic, the fact that
12 they're discussing this is illegal? That's what he was
13 saying.

14 Q. My question is different.

15 A. Uh-huh.

16 Q. Slightly different. Do you have any reason to
17 believe that Zack lacked sincerity in any way when he
18 honestly believed --

19 MR. SMITH: Objection.

20 MR. ALLEN: Let me strike that question.

21 THE WITNESS: Well, he --

22 THE REPORTER: I was gonna say I didn't get that
23 whole question.

24 BY MR. ALLEN:

Carmen Borges

Page 249

1 Q. I have to ask the question again because --

2 A. Okay.

3 Q. -- it's -- I'm getting caught in double
4 negatives, and I apologize. Do you have any reason to
5 doubt Zack's sincere belief that what happened in that
6 meeting was discriminatory?

7 A. I don't -- I can't speak to his sincere belief.

8 Q. Well, you seem to be able to speak --

9 A. I can't --

10 Q. -- Liliana Naydan's --

11 A. I can't -- but bringing that into a meeting of
12 that nature, I can see it turning the meeting around.
13 The -- the purpose of meeting being -- being dismantled
14 there because the purpose of the meeting is to -- to --
15 to -- to unpack and discuss this -- this -- this -- this
16 theory or this project or this presentation. But the
17 moment he went on to say this is illegal, that's where it
18 went wrong.

19 Q. And what did Liliana Naydan answer in response to
20 that last clip there?

21 A. I guess she shared her own experience.

22 Q. Did it sound like she was traumatized?

23 A. No.

24 MR. SMITH: Objection to form.

Carmen Borges

Page 250

1 BY MR. ALLEN:

2 Q. Did it sound like she was intimidated?

3 A. No.

4 Q. It certainly didn't sound like she was incapable
5 of speaking, did it?

6 A. No. She sounded fine sharing her story.

7 Q. I'm gonna mark as Exhibit 23.

8 (Exhibit Borges 23 was marked for identification.)

9 BY MR. ALLEN:

10 Q. A document with Bates stamp 03347. I'm gonna
11 represent to you that this was sent on January 20, 2022.

12 A. Uh-huh.

13 Q. But what I don't see is in the header who sent
14 it, but it says Carmen?

15 A. Yes. That's me.

16 Q. Did you send this e-mail, the one at the top?

17 A. Yes.

18 Q. And what are you responding to in this e-mail?

19 A. A letter she share with us that they were gonna
20 give to Zack.

21 Q. And is the letter that they were going to give to
22 Zack attached as the next -- now, I have to represent that
23 these are not in order. PSU, the last page of the e-mail
24 chain is PSU 03347. And then the document that begins

Carmen Borges

Page 251

1 January 20, 2022, that is PSU 03930. And I'm asking you
2 if you know if this is the letter that was circulated to
3 Zack Di Piero from Friederike Baer as the outcome of
4 the --

5 A. The final letter? I don't see. Oh, this one.

6 Q. It should start on the third page here.

7 A. Oh, I see. Okay. All right.

8 Q. Okay.

9 A. Yeah.

10 Q. Take as much time as you'd like to examine.

11 A. Yeah. It found that the only -- the only
12 recommendation that I said because at some point, they had
13 additional.

14 Q. Yeah.

15 A. And that's what I questioned them, that I didn't
16 see that necessary there. So eventually, I think this is
17 the letter and --

18 Q. And this also shows that you participated in the
19 final --

20 A. They consulted. They consulted us. Uh-huh.

21 Q. That's what I wanted to know. The last thing --
22 I think this will be the last exhibit. I'm gonna mark as
23 Exhibit 24 a letter with Bates stamp ZDP 088 dated
24 December 9, 2021.

Farrell Court Reporting

Carmen Borges

Page 252

1 (Exhibit Borges 24 was marked for identification.)

2 BY MR. ALLEN:

3 Q. Do you recognize this letter?

4 A. Yes.

5 Q. You sent this letter to my client, Dr. De Piero,
6 on December 9, 2021?

7 A. Yes.

8 Q. And what was the purpose of this letter?

9 A. This was I guess for him to know the result of
10 the investigation.

11 Q. And what was the result of the investigation?
12 Just summarize for the record.

13 A. Well, that his behavior was inconsistent, was
14 unprofessional and contrary to the university values
15 statement.

16 Q. And that value statement was the one we --

17 A. Yes.

18 Q. -- reviewed from the web page?

19 A. That's the one.

20 Q. Was there a meeting with Zack Di Piero in January
21 concerning all of the allegations against him?

22 A. In January?

23 Q. I'm sorry, January of 2022.

24 A. Well, this one is '21.

Farrell Court Reporting

Carmen Borges

Page 253

1 Q. Right. It's the end of the year, right?

2 A. '21.

3 MR. SMITH: December '21.

4 BY MR. ALLEN:

5 Q. This is December --

6 A. Oh, December. Okay.

7 Q. -- 9, 2021.

8 A. Okay. Okay.

9 Q. So in January of the new year --

10 A. Uh-huh.

11 Q. -- 2022?

12 A. Yeah. Okay.

13 Q. -- that --

14 A. I -- I think that's when the Lisa -- Lisa and

15 Friederike were deciding --

16 Q. Okay.

17 A. -- how to, you know, have a conversation with him

18 or the follow-up letter. That happened in January '22,

19 yes.

20 Q. And so I think it happened on January 13, 2022.

21 Does that correspond with your memory?

22 A. Yes, it's likely.

23 Q. And my only question for you about that, did you

24 participate in the meeting?

Farrell Court Reporting

Carmen Borges

Page 254

1 A. No.

2 Q. But you did discuss this with Friederike Baer and
3 Lisa Marranzini?

4 A. No. They only -- they only send the letter that
5 they were planning to provide to Zack, that they only run
6 the letter by us. The rest of it and what the meeting was
7 about, no, we did not participate in it.

8 MR. ALLEN: I'm gonna go off the record and
9 examine my notes.

10 (A break was held.)

11 (Exhibit Borges 25 was marked for identification.)

12 BY MR. ALLEN:

13 Q. I'm gonna mark as Exhibit 25 for the record a
14 document with Bates stamp PSU 0612. You recognize this
15 document, Ms. Borges?

16 A. I don't know why. It seems like I did see it.

17 Q. So you see your name is in the recipient line,
18 correct?

19 A. Oh, then that's why I had.

20 Q. And again, I'm not trying to catch you out.

21 A. No, no, no, but there has to be an explanation.

22 Q. But you acknowledge that you received this
23 e-mail?

24 A. Okay. Yes.

Carmen Borges

Page 255

1 Q. And it's dated January 10, 2022?

2 A. Yes.

3 Q. And then if you go down to the next page, it's
4 Zack De Piero, right?

5 A. Uh-huh.

6 Q. And it's from earlier in the day, correct?

7 A. Zack on January 10th, yeah, at -- yes, that one
8 808. Uh-huh.

9 Q. So I just want to call your attention to the
10 second to last paragraph. It's rather long, but it begins
11 with since my initial complaint. Do you see that on page
12 2 of the document?

13 A. Uh-huh. Yes.

14 Q. So he's talking about his initial complaint. And
15 do you understand that that is referencing the 7/13/2021
16 complaint?

17 A. Yes.

18 Q. And he says a lot has happened since then, right?

19 A. Yes.

20 Q. In September after seeing that the discriminatory
21 incident were continuing within the writing program
22 similar to the ones that I initially reported to the PHRC
23 as well as Friederike in two separate meetings, I filed an
24 internal bias discrimination report with the PSU

Farrell Court Reporting

Carmen Borges

Page 256

1 affirmative action office. Did I read that right?

2 A. Uh-huh. Yes.

3 Q. And that's accurate, correct?

4 A. Uh-huh. That's accurate.

5 Q. After meeting with the associate director Carmen
6 Borges, I was directed to continue attending these
7 meetings, even though I acknowledge that they felt
8 blatantly discriminatory and hostile such as when I asked
9 to watch a video titled white teachers are a problem for
10 an October 2020 writing program meeting. Did I read that
11 correctly?

12 A. You read it correctly. It doesn't mean he was
13 correct. I did not direct him to do anything. I have no
14 power to direct him to do anything.

15 Q. Well, then he continues. Carmen instructed me to
16 attend these meetings, quote, until you get it, close
17 quote, my notes, but added that I was free to disagree and
18 articulate my point of view at those meetings. Did I read
19 that correctly?

20 A. Well, you're reading it correctly, but it didn't
21 happen that way.

22 Q. Okay.

23 A. I object to the word directed and instructed.

24 Q. Okay.

Farrell Court Reporting

Carmen Borges

Page 257

1 A. I have no power over him or I'm not his boss to
2 tell him what to do.

3 Q. And this e-mail he sent on January 10, 2022,
4 right?

5 A. Uh-huh.

6 Q. It was received by you, correct?

7 A. Yes.

8 Q. And you're objecting to his characterization of
9 this discussion with you today --

10 A. Uh-huh.

11 Q. -- after you prepared for this with your
12 attorney, correct?

13 MR. SMITH: Objection to form.

14 THE WITNESS: No. No, no.

15 BY MR. ALLEN:

16 Q. Was it just simply --

17 A. When I read it, when I read it, but I objected to
18 whom at that time when I read it. You know, I read it and
19 I said that's not correct, but nothing --

20 Q. Can you identify any e-mail in which you objected
21 to Zack De Piero's characterization of your conversations
22 at the time?

23 A. About this?

24 Q. Correct.

Farrell Court Reporting

Carmen Borges

Page 258

1 A. No, because this was after all the facts, so I
2 just -- I just didn't react to it, didn't respond to it
3 because this was all after everything had been said and
4 done, and I saw it as his just venting out because of what
5 had happened and the letter he got, so I didn't --

6 Q. Okay.

7 A. Uh-huh.

8 Q. Sorry. I didn't mean to interrupt.

9 A. No. I didn't -- I didn't pay attention to --
10 didn't think I needed to or it was worth clarifying that.
11 At that point, everything was said and done.

12 Q. I just want to ask you these questions for the
13 record. At the time, you didn't object to Zack Di Piero's
14 characterization of your discussions?

15 MR. SMITH: Objection to form.

16 THE WITNESS: Of this e-mail --

17 BY MR. ALLEN:

18 Q. Of this e-mail and the mischaracterizing --

19 A. Well --

20 Q. -- as you say now after preparing for this
21 deposition.

22 A. No, no. Oh, no.

23 MR. SMITH: Objection to form.

24 THE WITNESS: This was all -- this process, the

Carmen Borges

Page 259

1 investigation, the -- the letter, all that was said and
2 done. That was over. So I -- when I read this, I said,
3 you know, he's hurt. He's this and this, so I didn't --
4 this was his reaction to everything, but it didn't call
5 for me to do anything further at the time.

6 BY MR. ALLEN:

7 Q. I'm just gonna ask a simple yes or no question.

8 A. Okay.

9 Q. -- and we can move on if I can get a simple yes
10 or no answer, or you can say I can't answer. At the time
11 January 10, 2022, you're claiming that Zack was
12 misrepresenting your conversations --

13 A. Uh-huh.

14 Q. -- here in our deposition. But at the time on
15 January 10, 2022, you made no effort to correct this
16 record?

17 MR. SMITH: Objection to form.

18 THE WITNESS: I -- I didn't think I needed to.

19 BY MR. ALLEN:

20 Q. And so you didn't?

21 A. I didn't.

22 Q. Okay. That's all. I'm gonna give you one last
23 exhibit, which is found -- this will be the last one, I
24 promise. It will be Exhibit 27 -- excuse me. It will be

Carmen Borges

Page 260

1 Exhibit 26 for the record with Bates stamp PSU 04137.

2 (Exhibit Borges 26 was marked for identification.)

3 BY MR. ALLEN:

4 Q. Now, I think this takes us back to the September
5 2021 time frame. And these are handwritten notes?

6 A. Uh-huh.

7 Q. Is it fair to say they're handwritten notes of
8 your meeting with Friederike Baer on September 16, 2021?

9 A. Yes. That's from a conversation with Friederike.

10 Q. And in that meeting, you recorded in your notes
11 that Friederike Baer told you Lila, meaning Liliana
12 Naydan, right?

13 A. Yes.

14 Q. Lila very committed to diversity issues,
15 sometimes too much. Did I read that right?

16 A. Yes.

17 Q. She uses the phrase microaggressions too
18 frequently. Did I read that correctly?

19 A. Yes. This was Friederike, yeah, what Friederike
20 shared with me.

21 Q. And that Zack Di Piero had shared that he and
22 other faculty had issues with her pushing her, quote,
23 agenda, close quote, right?

24 A. With her, share with her that he and other

Carmen Borges

Page 261

1 faculty have issues with her pushing her, yeah.

2 Q. She also said that Zack Di Piero --

3 THE REPORTER: I'm sorry. I did not hear that
4 question nor answer.

5 BY MR. ALLEN:

6 Q. I apologize. Let me rephrase. She also says --
7 Friederike Baer also said to you in this meeting that Zack
8 Di Piero is a good teacher, correct?

9 A. Try to find that in here. Yes, because I had
10 questioned her about what -- what -- what record, what he
11 gets from the students and they were good.

12 Q. So the teaching evaluations that we discussed
13 earlier in the record, I think you gave range, which I
14 can't remember, of his teaching evaluations, correct?

15 A. Five and seven.

16 Q. On what scale is that?

17 A. That's good from --

18 Q. Is the scale to 7 or to 10?

19 A. The scale is to -- it must be to 10. It used to
20 be to 5. But that -- if there's a 7 there, then that one
21 is to 10.

22 Q. At any rate, you characterize those teaching
23 evaluations as good?

24 A. Seven is a good. Uh-huh.

Farrell Court Reporting

Carmen Borges

Page 262

1 Q. Thank you. One last question. At the end, the
2 very last sentence you've written in your notes that
3 Friederike told the following. Friederike agreed that
4 Lila easily puts things, interactions in the
5 microaggressions category, correct?

6 A. Correct.

7 Q. Did you understand from that Liliana Naydan was
8 perhaps too sensitive?

9 A. That may have been the intention of the -- of the
10 comment.

11 Q. Did you understand from this that Lila Naydan was
12 too sensitive?

13 A. I don't remember making that -- making an
14 understanding of that. I -- I just wrote it as I heard
15 it.

16 Q. Did this influence your investigation of Zack Di
17 Piero when complaints were made against him by Liliana
18 Naydan?

19 A. No. The only thing that influenced me there was
20 the people in the meeting, what they said. My interview
21 with -- with the ones in the meeting. That's -- that was
22 my -- the only thing that I went by to corroborate.

23 Q. So I just -- just to get a clean answer to the
24 question. So what was written in your notes reflecting a

Carmen Borges

Page 263

1 conversation with Friederike Baer on September 16, 2021
2 had no influence on your investigation of Zack Di Piero
3 after Liliana Naydan made a complaint against him?

4 A. No.

5 Q. Okay.

6 MR. ALLEN: I'm gonna wrap it up there and pass
7 the witness.

8 THE WITNESS: One thing for sure is that Zack's
9 job was not -- never at risk, and I assure him that he
10 would not lose his job for disagreeing.

11 BY MR. ALLEN:

12 Q. Well, let me ask this, then.

13 A. But encourage him to improve his relationship
14 with Lila.

15 MR. ALLEN: I'm sorry to do that, but the witness
16 began speaking after I passed the witness. I have one
17 more question about what you just said.

18 BY MR. ALLEN:

19 Q. So if a Black man was simply tolerating racial
20 discrimination on the basis of his race, but didn't lose
21 his job, would that make it any less discrimination?

22 MR. SMITH: Objection to form.

23 BY MR. ALLEN:

24 Q. You're an officer of the affirmative action

Carmen Borges

Page 264

1 office at Penn State University. What would your answer
2 be to the question?

3 A. But these are discussions. I mean, I cannot
4 make -- I cannot make a determination based on an
5 assumption like that. No. These are --

6 Q. So it would be okay to tell a Black man Black
7 people are the problem as long as he didn't lose his job?

8 MR. SMITH: Objection to form.

9 THE WITNESS: So what Friederike was assuring him
10 is that you can -- you can disagree and, you know, your
11 job is not at stake. Don't feel because any time -- I
12 think he had mentioned that he was concerned for his job,
13 but Friederike really clearly assure him that he would not
14 lose his job for disagreeing 'cause his job wasn't --

15 MR. SMITH: There's not a question pending.

16 THE WITNESS: All right. Sorry.

17 MR. SMITH: That's okay. We all wanna get out of
18 here. I know it's getting late.

19 THE WITNESS: I don't know how you guys do this,
20 and I'm not gonna send any other e-mail -- is that still
21 on?

22 MR. SMITH: You're still on the record. Let's
23 wait for my questions. You've been a terrific witness.

24 BY MR. SMITH:

Farrell Court Reporting

Carmen Borges

Page 265

1 Q. Okay. Good -- I guess good evening, Carmen. I'm
2 gonna try to be very quick so we can all get out of here
3 and get home. I just got a handful of questions, a couple
4 clarifying things.

5 First thing I want to touch on. Earlier in your
6 deposition, I believe you testified that you didn't recall
7 if you met with Lila Naydan in relation to the complaint
8 that Zack filed against Lila. Do you remember that?

9 A. Uh-huh.

10 Q. So I just want to mark a couple documents and ask
11 about a couple things. I guess are we on I believe 27 or
12 28? 26 was the last one? So I'll just keep going in
13 order?

14 MR. ALLEN: 26? Do you wanna just introduce them
15 in series?

16 MR. SMITH: If it's gonna be Borges 1, 2, 3, I'll
17 just --

18 MR. ALLEN: I think it's easiest at this point
19 since we didn't go in series.

20 (Exhibit Borges 27 was marked for identification.)

21 BY MR. SMITH:

22 Q. I'm going to mark this document as Borges Exhibit
23 27. It's an e-mail chain. You'll see at the bottom it is
24 Bates labeled PSU 3278. The e-mail is dated October 20,

Carmen Borges

Page 266

1 2021. You recognize this document?

2 A. Yes.

3 Q. And just looking at the earliest e-mail in the
4 chain, which I think is the one at the bottom of the page,
5 looks like it's dated October 12th of 2021 at 11:03 a.m.,
6 an e-mail from you where you say hello, Liliana. You see
7 that?

8 A. Uh-huh. Yes.

9 Q. And I think you may have looked at this -- this
10 piece of the chain earlier, but this is another exhibit.
11 But this is the one where you say this is Carmen Borges
12 from the affirmative action office. The office has
13 received a concern about a presentation in your program,
14 and I would like to discuss this with you. And you ask
15 her about availability to schedule a meeting. You --

16 A. Yes. Yes.

17 Q. At 11:06 a.m. on the same day, Liliana Naydan
18 responds and she writes hi, Carmen. I'm free from 1:30 to
19 3:00 p.m. today. Are you free then? Which program are
20 you concerned about? You see that?

21 A. Yes.

22 Q. And one more e-mail above this, the same date at
23 11:16 a.m. You are responding to Liliana's e-mail. And
24 you say yes, I'm available at 2:00 p.m. Do you want to do

Carmen Borges

Page 267

1 Zoom or Teams call? If Zoom, I can coordinate it and send
2 you notice. If Teams, I can call you. Did I read that
3 correctly?

4 A. Yes. Yes.

5 Q. I'm gonna ask you to put that aside for a moment.
6 And then I'll mark the next document -- I guess this would
7 be 28?

8 MR. ALLEN: Yep.

9 (Exhibit Borges 28 was marked for identification.)

10 BY MR. SMITH:

11 Q. A two page document -- I'm sorry it's not
12 stickered. We just got this in a moment ago. And it
13 begins with the Bates number PSU 4934 and goes on to 4935.
14 I will just note for the record that this document is
15 marked confidential subject to protective order. There
16 may be some FERPA information in this document.

17 MR. ALLEN: Can I just interrupt for a second?

18 MR. SMITH: Sure.

19 MR. ALLEN: Is this a copy of a previously
20 introduced document?

21 MR. SMITH: No. I'm not sure it was admitted at
22 a prior deposition, so --

23 MR. ALLEN: So you're -- just to get the
24 designation correct, you're marking this as confidential,

Farrell Court Reporting

Carmen Borges

Page 268

1 and are the confidential portions marked by the student
2 issue?

3 MR. SMITH: They are not. I think that the
4 student's name or names are visible in this document, so
5 we would just mark this, I guess, exhibit as confidential
6 or however we were working it under the --

7 MR. ALLEN: Correct. And we agreed because of
8 the agreement which we stipulated to.

9 MR. SMITH: I believe that's the only
10 confidential --

11 MR. ALLEN: We have no interest, as I've said on
12 the record, with anyone.

13 MR. SMITH: I just wanted to clarify.

14 MR. ALLEN: I thought for a second this was the
15 previous complaint that Ms. Naydan submitted against Zack
16 because of its bullet point form, but please.

17 BY MR. SMITH:

18 Q. So Carmen, looking at this document, you'll see
19 it's an e-mail dated the same dates as the e-mails we just
20 looked at. It's october 12, 2021, and this e-mail is
21 later in the day at 3:05 p.m. Do you see that?

22 A. Yes.

23 Q. And it's an e-mail from Liliana Naydan to you.
24 And she says hi, Carmen. Thank you again for that

Carmen Borges

Page 269

1 conversation today. I appreciate you and I appreciated
2 talking with you very much. That's how the e-mail begins.
3 Did I read that correctly?

4 A. Yes.

5 Q. Does this refresh your recollection as to whether
6 you met with Liliana Naydan relating to Zack Di Piero's
7 complaint?

8 A. I must have, yeah. I mean, it's clearly that I
9 met with her. I didn't take any notes, and I can't -- I
10 can't -- I can't -- nothing comes to mind about what we
11 talked.

12 Q. Do you recall receiving this e-mail from Liliana
13 in relation to a follow-up from a meeting you had with
14 her?

15 A. Yes.

16 Q. That's --

17 A. It talks about it --

18 Q. We can put it aside. That's all I need it for
19 just to clarify the record. And then one more exhibit.
20 This is a one page document, Bates labeled PSU 4134, and I
21 think this will be Borges Exhibit 29.

22 (Exhibit Borges 29 was marked for identification.)

23 BY MR. SMITH:

24 Q. This appears to be a handwritten note dated

Farrell Court Reporting

Carmen Borges

Page 270

1 October 1, 2021. Carmen, does this -- is this a note that
2 you created?

3 A. Uh-huh.

4 Q. And it seems to reflect a meeting with Friederike
5 Baer on October 1, 2021. Is that accurate?

6 A. Yes.

7 Q. Does this refresh your recollection as to whether
8 you also met with Friederike Baer on October 1, 2021 in
9 relation to the complaint submitted by Zack Di Piero? Is
10 that a yes?

11 A. Yes. Is not happy with her continued push of
12 diversity agenda. I mean --

13 Q. Does this record refresh your recollection as to
14 whether you met with Friederike relating to Zack's
15 complaint?

16 A. Based on this, it looks like it.

17 Q. Or had a call? I don't know if you --

18 A. A call --

19 Q. -- met with her in person.

20 A. Uh-huh.

21 MR. SMITH: That's all. Just down the path you
22 just went, I have a couple other questions.

23 BY MR. SMITH:

24 Q. Carmen, earlier I think you testified so you had

Carmen Borges

Page 271

1 a meeting with Dr. De Piero on September 22, 2021 in
2 relation to the complaint that he submitted --

3 A. Uh-huh.

4 Q. -- regarding Liliana Naydan. I want to ask you
5 more about that. At any time did Dr. De Piero request
6 your consent to record the meeting you had with him on
7 September --

8 A. Absolutely not.

9 Q. Let me finish first. Did Dr. De Piero request
10 your consent to record the meeting you had with him on
11 September 22, 2021?

12 A. No.

13 Q. At any time did you provide your consent to
14 Dr. De Piero for him to record that meeting?

15 A. No.

16 Q. And in your experience when you meet with a
17 complainant regarding a bias complaint that they submit at
18 Penn State, are those meetings private?

19 A. Yes.

20 Q. Do you have an expectation that those meetings
21 will be held privately?

22 A. Yes.

23 Q. And at the time of your meeting with Dr. De Piero
24 in September 2021, was it your expectation that that

Farrell Court Reporting

Carmen Borges

Page 272

1 specific meeting with Dr. De Piero was a private meeting
2 between you and just him?

3 A. Yes.

4 Q. At the time of your meeting with Dr. De Piero on
5 September 22, 2021, were you aware that Dr. De Piero was
6 recording that meeting?

7 A. No.

8 Q. I just want to ask you about the second meeting
9 you had with Dr. De Piero relating to the complaint
10 against Dr. De Piero, the complaints that Liliana Naydan
11 and Grace Lee-Amuzie submitted against Dr. De Piero. I
12 believe you had a meeting with him on October 27, 2021; is
13 that correct?

14 A. I think.

15 Q. And similar to the first meeting, at any time did
16 Dr. De Piero request your consent to record the meeting
17 you had with him on October 27, 2021?

18 A. No.

19 Q. At any time did you provide your consent to
20 Dr. De Piero for him to record that meeting?

21 A. No.

22 Q. And at the time of your meeting Dr. De Piero on
23 October 27, 2021, was it your expectation that that
24 meeting was being held privately between just you and

Farrell Court Reporting

Carmen Borges

Page 273

1 Dr. De Piero?

2 A. Yes.

3 Q. And at the time of that meeting, were you aware
4 that Dr. De Piero was recording your meeting?

5 A. No.

6 Q. I think I just have one -- one last question.
7 When you first speak with an individual who has submitted
8 a bias complaint or a discrimination complaint at Penn
9 State, is it your standard practice to advise that person
10 about available support services?

11 A. Yes.

12 Q. And does that include counseling services?

13 A. Yes.

14 Q. And do you recall providing information to Dr. De
15 Piero regarding available support services and counseling
16 services when you contacted him regarding his
17 discrimination complaint?

18 A. Yes, and it's actually a reminder of a Penn State
19 benefit for all employees.

20 Q. And that's a standard practice that you do for
21 any complainant at Penn State, correct?

22 A. Yes.

23 MR. SMITH: I think that's all I have.

24 MR. ALLEN: Just one more question or a series of

Carmen Borges

Page 274

1 questions.

2 BY MR. ALLEN:

3 Q. I wanted to turn back to Exhibit No. 28. These
4 are these bullet points. And if I could also ask you to
5 hang onto Exhibit 17 as well? Can you get those two
6 exhibits up? And with Exhibit 17 --

7 A. Excuse me.

8 Q. I'm sorry. That's not the first one. I'm
9 looking for the exhibit which is all of your notes.

10 A. Is it this one?

11 Q. No, the one that has all your notes of the
12 investigation of Zack. Do you remember that?

13 A. Yeah. Let me see.

14 Q. And --

15 A. This one probably.

16 Q. It's Exhibit 19, so my mistake. Can I ask you to
17 look at Exhibit 19 and Exhibit 28 together? And if we
18 could go to the very end of that is Liliana Naydan's
19 interview notes. I believe they start on the end of the
20 exhibit, which is Bates marked PSU 163. Can you look
21 at -- if I could just handle the exhibits for one second?

22 A. Oh, okay.

23 Q. These are the notes, your handwritten notes --

24 A. Oh.

Farrell Court Reporting

Carmen Borges

Page 275

1 Q. -- from your interview with Liliana Naydan.

2 A. Uh-huh. October 19th.

3 Q. October 19, 2021?

4 A. Uh-huh.

5 Q. Correct?

6 A. Correct.

7 Q. And this is an e-mail Liliana Naydan Exhibit 28.

8 It's an e-mail Liliana Naydan sent you on October 12,
9 2021, not even a week before, correct? And in both of
10 these interviews, she dwelled upon more or less the same
11 issues, correct?

12 A. The Exhibit 28?

13 Q. Exhibit 28 that was introduced into the record by
14 your counsel.

15 A. Okay.

16 Q. Is an e-mail by Liliana Naydan of 10/12/2021
17 apparently reflecting a conversation you had that day?

18 A. Okay. Uh-huh.

19 Q. And my question is in your meeting with her on
20 the 12th and a meeting with her a week later on the 19th,
21 your notes reflect more or less that she wanted to discuss
22 the same things?

23 A. Yes. I mean, she says here the problems with
24 Zack began late 2019, early 2020.

Farrell Court Reporting

Carmen Borges

Page 276

1 Q. Uh-huh. And she's going back over the things
2 that she alleged in her original complaint that was
3 submitted against an anonymous faculty member in March of
4 2021, right?

5 A. Uh-huh. That's -- yeah.

6 Q. So my question for you about Exhibit 28 is also
7 there doesn't seem to be any reflection in this e-mail
8 that you discussed anything about Zack Di Piero's
9 complaint of discrimination against her. I'm looking at
10 the --

11 A. Oh.

12 Q. 10/12/2021.

13 A. 10/12.

14 Q. And if you can point to me something in this
15 e-mail that reflects a discussion you had about Zack Di
16 Piero's complaint against Liliana Naydan for
17 discrimination, please direct me to that passage.

18 A. This is kind of like a summary of things. The
19 issue with the student in 2020, yeah, the mask.

20 Q. Is there something --

21 A. Are we sure --

22 Q. -- Liliana Naydan, right?

23 A. I know. Are we sure this was from 2021? It
24 sounds like the -- yeah.

Farrell Court Reporting

Carmen Borges

Page 277

1 Q. I'm just going on the exhibit that your attorney
2 introduced into the record.

3 A. Yes. This -- this is the list of things she had
4 submitted anonymously.

5 Q. Now that you knew it was Zack, more or less,
6 right? Now, and the question is it seemed like you were
7 setting up a meeting on the 12th of October as part of
8 your investigation into Zack De Piero's complaint of a
9 month earlier about discrimination, correct?

10 A. Make --

11 Q. But nothing in this e-mail seems to reflect any
12 questions about discrimination against my client by
13 Liliana Naydan, and I'm asking you if you can point to me
14 where anything reflects that you guys discussed, you and
15 Liliana Naydan discussed the allegation of discrimination
16 against her.

17 A. No.

18 Q. There's just one last question. It has to do
19 with the very last exhibit was Exhibit 29. This was your
20 handwritten note?

21 A. This --

22 Q. October 1, 2021 --

23 A. This is -- yes.

24 Q. -- with Friederike Baer.

Carmen Borges

Page 278

1 A. Okay.

2 Q. Bates stamped PSU 4134. Now, it's my
3 understanding from our deposition today that it's your
4 habit to keep what you call scratchy notes on every
5 interview.

6 MR. SMITH: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. ALLEN:

9 Q. And so this is the scratchy notes of that October
10 1, 2021 meeting with Friederike Baer, right?

11 A. Yeah, but that's --

12 Q. One thing that -- I mean, I honestly don't know,
13 so this is why I'm asking. I don't -- I have not found --
14 and I'm not saying that I'm perfect.

15 A. Uh-huh.

16 Q. I have not found any scratchy notes from your
17 conversation with Liliana Naydan from October 12, 2021 or
18 at any time in which you interviewed her about the
19 complaint that Zack Di Piero launched against her.
20 Therefore, my question is did you take what you call
21 scratchy notes, handwritten notes of that meeting?

22 A. Um, even if it's not detail, I typically put the
23 date and something.

24 Q. And --

Farrell Court Reporting

Carmen Borges

Page 279

1 A. I don't remember --

2 Q. -- this one was from around that time?

3 A. Yeah.

4 Q. Two weeks earlier, more or less?

5 A. Yeah.

6 Q. And it's only one paragraph, but it's --

7 A. Yeah, something to remind me that yes, that day
8 we had that meeting.

9 Q. So I'm gonna ask that you -- and I'll ask your
10 counsel, too, that you examine your records one more time
11 to see if such a handwritten note exists reflecting the
12 meeting --

13 A. On October 12th.

14 Q. -- you and Liliana Naydan about the complaint
15 Zack Di Piero, my client, lodged against her. Last
16 question. October 29 and continue issues with Lila Naydan
17 not happy with her continue push of diversity agenda. Did
18 I read that correctly?

19 A. Yes.

20 Q. Is this something Dr. Baer raised with you?

21 A. Yes.

22 Q. So she felt that there were continued issues with
23 Professor Naydan as well?

24 A. Well, her not being happy.

Farrell Court Reporting

Carmen Borges

Page 280

1 Q. Her being?

2 A. Lila not happy with her -- oh. Continuations
3 with Lila not happy with her continue -- yeah, sounded
4 like Friederike was not.

5 Q. Friederike was not happy?

6 A. That's what it sounds, not happy with her
7 continued push of diversity agenda.

8 Q. And you don't have any form --

9 A. Maybe she will explain it further or maybe it was
10 Zack who was not happy, so yeah.

11 Q. As you sit here today, you don't have any
12 concrete memory of who was unhappy with whom?

13 A. Exactly.

14 Q. Okay.

15 A. I'm so sorry I didn't take better notes there.
16 But -- but either -- either she was not happy or Zack was
17 not happy. It's one of the two.

18 Q. Sounds like an unhappy department.

19 A. Yeah.

20 MR. SMITH: Objection to form.

21 MR. ALLEN: I have no further questions. I just
22 want to -- I think that maybe we can --

23 MR. SMITH: We're all set.

24 (The deposition was concluded at 7:02 p.m.)

Farrell Court Reporting

C E R T I F I C A T I O N

I, Vicki Mengel, Court Reporter, certify that the following is a true and accurate transcript of the foregoing deposition/hearing/arbitration, that the witness was first sworn by me at the time, place, and on the date herein before me set forth.

I further certify that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.



VICKI MENGEL

Court Reporter and Notary Public

A	academicians 194:1	223:8 247:5 256:1	204:10	260:23 270:12
A-S-A-O 141:13	academics 91:14	263:24 266:12	advance 182:11	279:17 280:7
a.m 1:17 124:24	93:6 231:3	actionable 234:23	advantage 124:1	aggression 58:22
131:22 266:5,17	accent 214:4	actions 18:9 117:4	adversely 48:5	aggressive 55:9
266:23	accepted 24:19	activated 112:20	advertise 18:18	155:9 170:21
AAO 20:8	access 17:23 20:5,6	active 28:3 35:2	advertising 18:18	171:5,9 172:3,3
ability 6:24	49:4 59:11 72:20	activities 49:4	advise 273:9	182:19 183:2
Abington 29:8,16	72:22,23	activity 174:1	advisees 97:7	189:5,20,21 190:5
29:21 30:1,10,13	accessed 243:12,18	acts 49:1,9,12,16	advising 84:17,19	190:11,11 191:3
30:19,19 31:3,18	accessible 30:21	actual 71:21 152:5	93:24 96:15,17,18	194:7 195:2
32:24 33:5,19	accident 203:22	152:8 163:19	106:21,21	198:11 212:7
34:10 35:14 36:6	accommodate	209:15	advisor 85:17,24	215:16 219:9
36:18 38:12,18	79:10	ad 27:8 28:2 46:15	93:20,23 94:4,9	220:13 221:12
39:8 40:8,10	accurate 27:1	47:1,4 56:24 59:8	95:8 96:6	222:7 223:4 232:7
41:11,12,14,16,21	179:11 188:5	Adair 17:14	affairs 43:22 44:6	238:21 246:21
41:22 42:13 67:3	226:7,18 256:3,4	adamancy 175:6	99:8,10 134:11	aggressively 138:22
67:9 99:13,15	270:5	adamant 175:5	affect 7:4 49:5	ago 5:18 11:12,16
116:2,6,7,9 118:3	accusations 61:7	add 25:15	50:20	17:21 19:23 22:4
120:19 136:4	101:21,22	added 256:17	affirmative 12:6	102:5 201:17
141:22 143:11	accuse 173:14	addition 9:7	17:17 18:4,6,8	203:2 267:12
181:1 242:5,6	accused 105:3,17	additional 162:20	19:7,10,13 20:10	agree 16:12 20:9
Abington's 30:3	109:21 110:4,9	251:13	22:1,2,20 23:12	58:19 67:1 104:14
able 69:18 70:20	191:21 203:11,18	address 15:5,12	24:3 29:19,24	130:8 132:12,14
138:19 160:18,22	accusing 63:7	72:17 73:6,9 76:6	32:17 33:11 39:9	144:14 147:12,14
184:12 209:6	174:15	90:4 97:13 100:7	39:20 40:11,12	148:15 149:20
215:6 249:8	acknowledge	115:14 123:9,10	42:2 44:16,23	150:15,18 154:12
Absolutely 151:9	254:22 256:7	126:13 150:10	45:16 46:4 57:13	156:11 158:23
202:6 271:8	acronym 65:3	192:12	57:21 60:21 61:6	183:18 225:16
AC 42:22	110:14	addressed 75:22,23	67:18 74:15 76:5	228:17
academia 149:4	acronyms 65:15	76:1 89:22,23	83:5 123:3,5	agreed 15:18,21
228:22 233:18	act 58:21 204:15	90:2 97:24 119:2	143:6 146:13	262:3 268:7
academic 17:3 21:9	acting 111:23	126:18 133:8	190:7 212:12	agreement 156:10
21:15 43:18,23	134:16 186:18	235:23	223:8 247:5 256:1	268:8
91:16 99:7,10	action 12:6 17:17	addresses 116:22	263:24 266:12	ahead 96:14 122:14
134:11 149:21	18:4,6 19:7,10,13	118:12 120:15	affirmatively 29:19	156:9 175:20
153:15 161:19	20:10 22:1,2,20	121:9,11 126:8	aftermath 234:11	188:3
168:18 170:7,7	23:12 24:3 29:20	133:1	age 14:23 37:21	al 1:8
181:18 198:10	29:24 32:18 33:11	addressing 33:11	103:20 104:2,5,6	Albaugh 186:1,17
224:19,20 225:13	39:10,20 40:11,13	118:15 120:10	104:10,15,20,24	187:4
226:10,11,12,12	42:2 44:17,23	administered 44:5	202:23 204:6,8,8	alcohol 104:21
230:24,24 231:2	45:17 46:4 55:10	administration	204:10	Alina 75:3,8,8,19
233:10,11,13	57:4,6,14,21	79:10,12,13	aged 133:20 137:14	77:15,16
234:2 239:5	60:21 61:6 67:18	admire 107:11	agency 186:11,12	allegation 71:13
247:11,11	74:15 76:5 83:6	admitted 267:21	187:6,19	72:15 101:3
academician	123:3,6 146:13	admittedly 237:8	agenda 152:20	247:19 277:15
143:18	190:7 212:12	adult 202:23	158:19,20,24	allegations 64:2

71:12,20 72:14 100:14 136:22 179:23 248:9 252:21 allege 104:10,11,12 alleged 50:12 53:10 100:4 276:2 allegiance 137:17 alleging 58:3 111:2 Allen 2:3,4 3:7 5:4 5:5,9 8:5 12:16,22 13:2 15:4,17,22 17:11 21:2 24:21 25:6,23 26:8,11 26:17 31:16 32:13 33:21 35:18 36:12 37:5,7,13 38:23 39:6 40:3 42:21 44:19 46:9,14 47:12,16,23 48:7 52:24 53:18,24 54:16 56:3,10,15 56:23 59:6,18 60:3,14 62:8,10 76:19 80:8 82:19 83:9,12 84:18 87:16 88:4 89:3 89:13,18 90:1,20 93:11 94:7,12,18 94:23,24 95:19 97:5 98:4,12,15 98:16 101:4,10 104:19 105:12 106:1 107:5,7,22 108:3,23 112:16 113:19 125:14 126:24 127:17 128:11,14 129:19 130:5 131:6 132:17 134:2 136:16,20 139:13 139:15 145:10,18 146:2,8,21 147:11 147:20 148:10 150:12,22 151:21 152:12 153:2	154:23 157:4,9 158:2 159:22 160:1,4 162:5 166:10 170:1,9,19 170:23 176:16 177:18 178:2,14 178:17,19 182:10 185:21 192:2 193:15 196:1 199:11,17,21 201:22 205:12 207:17,21,24 209:11 210:18 212:3 213:16 214:14,20,22 215:5,11 217:5 218:7 219:5,23 220:6,24 221:7,24 222:21 224:5 227:20 228:8,16 231:21 232:13,21 234:9 235:2,6 236:21 237:14 238:13,20 239:11 239:16,18 240:14 241:7 243:8 245:4 245:14 247:22 248:20,24 250:1,9 252:2 253:4 254:8 254:12 257:15 258:17 259:6,19 260:3 261:5 263:6 263:11,15,18,23 265:14,18 267:8 267:17,19,23 268:7,11,14 273:24 274:2 278:8 280:21 allow 209:21 210:1 allowing 231:6 amended 26:6 America 228:18 America's 228:18 American 19:18 25:2 39:17,18 236:17	Americans 39:13 50:9 amount 10:6 ample 211:21 analyzing 237:19 and/or 99:23 Andrew 135:8 Andy 134:7 anecdotal 88:9 Anessah 28:22 29:12 anger 155:23 159:3 angry 155:8 156:17 182:24 183:1 189:3,9 190:8,12 announcement 118:23 anonymous 56:5 62:24 63:3 64:9 67:21 78:8 81:3,5 90:3 100:2 107:18 107:19 108:1,2,7 109:16 112:10 178:22 276:3 anonymously 111:17 112:20 277:4 answer 6:15,21,24 7:11,12,14,16 8:9 8:15 11:22 12:11 12:23 13:1,5 14:12 28:11 31:15 31:23,24 34:1 39:5,15 51:23 66:12,16,17 73:1 80:18 81:9,19 93:21,22 94:21 97:3 122:20 129:20 154:14,15 154:15,18 156:1 161:13 168:2 173:21 175:14 177:13,21 190:22 191:2 192:15,21 194:15,22 215:17 215:19,21,22	216:5 217:24 218:5 221:3,6 226:3 228:24 229:3,3,4,7 249:19 259:10,10 261:4 262:23 264:1 answered 94:23 95:20 219:15 answering 8:13 226:14 229:2 answers 39:23 101:7 148:24 149:1 191:1 218:24 221:1 antidiscrimination 15:13 44:22 46:4 105:14 224:17 225:3 226:8,19 228:19 antiharassment 42:8 44:15 antiracism 118:9 137:12,15 169:14 180:24 203:5 antiracist 174:6 176:13 anybody 56:9 152:1 213:19 229:13 anymore 104:16 anyway 225:3 apologize 37:20 124:15,16,21 128:23 160:2 167:22 182:11 207:23 208:1 249:4 261:6 apology 128:21 129:23 apparently 51:15 64:16 92:4,17,24 96:5 103:3 118:22 120:13 123:22 138:18 189:15 203:7 275:17 appear 6:13 188:13	appearances 2:1 117:20 appeared 27:1 appears 76:20 183:3 269:24 applicant 18:20 22:5 24:7 42:4,4 applicants 18:11,14 18:16,21 19:6 25:15,15 application 22:19 apply 46:8 appointment 78:18 78:21 appointments 73:9 appreciate 269:1 appreciated 269:1 approach 20:10 196:23 appropriate 74:3 189:9 230:16 234:20 approve 121:4,6 approximately 14:3 30:10 108:18 216:3 220:20 April 107:6 108:18 109:4,4 area 36:11 41:11 42:5 112:5 123:20 139:22 areas 41:18 114:18 223:16 225:24 arguing 131:3 argument 228:12 array 34:17 arrive 44:12 191:13 article 64:17 66:19 66:21 88:9,10 169:13 172:14,15 180:23 191:14 203:4 articulate 256:18 articulating 219:13 Asao 140:4,4,11 141:11 149:19
---	---	--	---	---

150:15,24 152:17 159:7 229:14,14 229:18 ascribes 30:19 Asian 39:16 50:8 Asians 19:18 aside 26:12 27:6 37:4 46:12 81:5 130:2 267:5 269:18 asked 7:11 8:17 39:15 61:10,12 66:11 88:10 101:7 111:20 154:1,3 155:2 168:17 172:14 174:14 177:19 178:1 187:24 189:1 194:4 219:6 226:4 256:8 asking 6:20 12:22 47:21 51:13 55:21 63:22 66:14 69:2 114:5,6 143:24 146:15 150:13 151:5 152:14 154:6 156:2,5 163:10 167:2 173:21 175:15,15 177:14,14 191:2 192:16 194:16 196:16 198:12,12 223:6 225:2,22 230:14 233:13,19 233:20 237:9 242:18 246:20,22 248:3 251:1 277:13 278:13 asks 66:13 218:24 219:3 assertive 96:20 assessment 115:10 assigned 155:5 156:6 177:21 assist 135:4 assistance 17:16	Assistant 17:16 associate 29:18 57:14,21 256:5 associated 111:21 associates 45:11 55:17 assume 8:16 41:17 105:7,10,11,18,23 199:23 203:15 assumed 105:22 114:24 202:24 assuming 27:17 106:9 assumption 106:3 118:8 203:17 264:5 assumptions 174:7 assure 263:9 264:13 assuring 264:9 athletes 235:12 attached 4:20 188:3 250:22 attachment 187:3 attachments 162:23 163:5,11 attack 58:11 attacked 142:16 attacking 59:24 149:9 attacks 53:16,16 attend 256:16 attendance 171:22 attending 184:23 256:6 attention 135:11,16 162:22 178:4 247:7,9 255:9 258:9 attorney 5:6,13 7:8 7:17 9:17,18,19 9:20 86:15 186:4 186:5,18,18 204:23 211:24 217:16 257:12 277:1 attorneys 27:17	211:20 228:11 attributed 111:11 111:12,13 audibly 6:15,21 audience 153:13 audio 4:10 210:15 212:2 213:14 215:4,10 218:6 219:4,22 220:5,23 221:5,22 222:20 224:4 234:7 239:13,20 240:2,8 August 19:22 113:9 113:16,21,23 124:24 130:7 131:21 133:24 134:10 135:8 155:12 author 241:15 authority 63:12,14 85:4,23 130:18,24 145:4 availability 266:15 available 34:23 266:24 273:10,15 average 38:7 39:1 avoid 43:12 aware 29:11 36:10 36:21,22 37:8 44:2,3,3 95:22 102:22 103:23 113:3,9 122:18 139:12 159:6,8,11 178:15 187:17,21 227:12,14,21 235:7 272:5 273:3 awareness 13:17 23:6 awkward 96:18	106:12 107:15 110:12 112:10 113:22 154:7 160:1 162:16 168:2,22 175:14 178:4 179:5 180:9 197:12 198:18 201:9,15 205:4 206:4 215:3 235:9 235:13 260:4 274:3 276:1 background 103:15 103:17 202:16 234:21 backing 117:4 127:24 150:13 bad 16:20 66:11 176:24 Baer 69:8,9,9,9,9 70:1 99:9 102:8 109:23 110:6,8,21 111:3,7 113:3 251:3 254:2 260:8 260:11 261:7 263:1 270:5,8 277:24 278:10 279:20 balance 35:13 235:13 balancing 78:11 ball 216:16 217:14 bar 183:20 186:22 based 20:23 21:16 21:16 35:5,7,19 35:20,22 41:20,20 63:22 82:4 95:6 95:15 117:19 139:21 196:18 202:23 226:12,12 226:13 231:24 236:1 237:23,24 242:15 264:4 270:16 basic 169:14 basically 24:14 63:13 68:19 77:12	157:20 199:22 basis 16:13 17:7 39:22 41:4,23 61:21 104:15 105:7,18,21 170:3 203:15 263:20 Bates 4:8,13 27:13 27:18,20 43:2,6,6 43:14,15 46:19,20 83:14 98:15 107:5 113:16 125:6,15 128:12 130:6 133:23 157:6 159:19 160:6 162:2 166:8,18 180:18 182:7,12 185:17 195:23 196:2 199:12 210:24 211:8 239:7 240:3,22 250:10 251:23 254:14 260:1 265:24 267:13 269:20 274:20 278:2 beams 235:13 bear 185:18 beauty 235:12 Beetlestone 227:15 227:23 began 5:21 75:3 76:3 77:3 203:9 233:23 234:1 248:5 263:16 275:24 beginning 5:14 70:23 76:9 119:6 159:12 172:7 199:24 200:22 204:15 205:23 206:16 224:10 233:11 begins 32:23 93:18 96:6 113:16 119:7 119:22 120:20 121:14 131:18
--	---	---	--	---

178:20 198:20 199:2 205:20 212:1 244:21 250:24 255:10 267:13 269:2 behave 238:11 behavior 15:12 47:18,18 48:24 52:5,8 54:12,14 54:18 55:6,9,19 56:5,11 59:22,23 59:23 60:24,24 61:1 137:19 156:12 174:9 237:23 238:1,3 245:23 252:13 behaviors 61:4 189:12 belief 249:5,7 believe 10:21 31:5 34:13,21 39:17 74:4 76:14 77:15 77:17 78:2 82:2 90:8 92:3 97:17 97:22 101:16 109:17 122:16 125:1 137:10,10 180:12,19 194:4 201:10,23 207:17 220:7 240:23 242:19 248:8,17 265:6,11 268:9 272:12 274:19 believed 248:18 believes 203:9 230:8,8,9 belong 71:1 78:9 benefit 48:4 122:2 273:19 best 18:13,15 24:7 224:24 better 46:10 78:11 78:11 105:2 280:15 beyond 148:6,16 149:21,21 150:19	155:13 bias 13:10 14:13,15 15:5,11,11,24 16:8 49:1,9,13 70:22 74:5,5,7,20 75:1,5,21 76:1,8 76:17 77:1,2,19 79:18 99:23,24 100:3,10,12,15 101:8 103:7,7,10 103:12,19 105:5 105:16 106:9 107:13,24 202:17 202:18 255:24 271:17 273:8 big 22:17 66:19 67:15 149:15 208:21 227:10 228:15 245:15 bigger 13:7 bit 113:22 120:14 209:14 218:23 black 19:18 39:7,13 49:22 67:4 101:14 102:5 103:4,6 105:7,16,23 109:21 116:24 119:5 120:4 122:14 123:8 126:11 129:15 131:11 132:21 137:6,7,11,20,24 138:4,9 143:7,11 145:11,20,21,22 146:1,5,24 147:1 147:8,10 191:22 191:24 192:3,4 202:24 203:16 226:21,22 227:5,6 235:23,24 236:1,6 236:6,11 263:19 264:6,6 blacked 101:16 106:10 178:5,8 blacks 178:10 blank 142:20	165:16 blanked 86:11,13 86:14,16 blatantly 256:8 blind 20:19 155:13 166:13 168:19 block 28:13 blood 139:11 Bloom 117:17 Bloomer 116:22 117:22 blue 129:5 184:2,14 184:21 185:2 245:13,15 body 30:22 31:6,9 32:19 34:15 36:8 36:15,20 67:1 171:5,9,15 172:3 172:4,8 173:17 174:15,23,24 182:19 189:20,23 190:5 191:16 194:7 bogus 89:9 bold 88:6 bombardment 228:4 book 168:18 books 152:21,21 Borges 1:15 3:5,13 3:14,15,16,17,18 3:19,20,21,22,23 3:24 4:3,4,5,6,7,8 4:9,10,11,12,13 4:14,15,16,17,18 4:19 5:1,5,10 25:22,24 26:15,16 26:19,21,22 37:12 42:20 46:13 83:11 83:13 98:14 107:4 113:18 128:13 130:4 132:12 134:1 139:16 157:8 158:1,6 159:21 160:10 162:4 166:9 182:9	185:20 208:1 210:23 228:9 240:10,13 241:6 241:10 243:7 250:8 252:1 254:11,15 256:6 260:2 265:16,20 265:22 266:11 267:9 269:21,22 boss 257:1 bottom 96:3,4 118:3 119:1 129:2 134:3 135:2 158:13 243:16 265:23 266:4 Box 2:5 bracket 172:24 break 8:7,8 83:10 139:14 209:5,10 239:17 254:10 breakdown 36:15 41:7,22 brief 222:13 239:18 briefly 239:16 bring 23:18,19,21 34:13 137:22 195:20 247:7 bringing 247:9 249:11 brings 23:15,15,16 24:20 25:11,13 31:10 broader 13:7 23:13 23:14,17 brought 103:21 145:2 215:2 234:15 bubble 184:14,21 185:2 199:5 bubbles 184:3 building 7:9 bullet 93:18 169:8 179:12,22 268:16 274:4 bullying 168:11 171:17 206:1	238:23,24,24 busy 66:20 buy 104:20 bypassing 64:10 85:3,23 <hr/> C <hr/> calculations 42:2 caliber 118:9 call 22:10 63:4 68:7 68:8 85:1 126:22 135:11,16 138:13 161:21 178:3 204:11 255:9 259:4 267:1,2 270:17,18 278:4 278:20 called 5:1 22:1 27:18 57:8 74:5 79:17 91:2 173:20 192:4 238:23 calling 50:2 91:8,8 91:9,11 camp 237:1 camps 237:4,4 campus 30:3,6 34:13 42:12 96:20 117:14 136:5 138:4,6,7 143:8 191:14 196:24 230:21 242:3 campuses 41:18 242:7 candidates 21:14 21:19 Cannon 117:23,24 131:20 132:6,7 capital 49:1 capitalized 49:10 caption 83:15 166:11 captioned 26:14 27:8 42:22 46:15 capture 236:23 captured 39:9 care 138:13,13
--	--	--	--	--

Carmen 1:15 3:5 5:1 26:15 240:10 250:14 256:5,15 265:1 266:11,18 268:18,24 270:1 270:24	147:14 228:11 250:4 chain 113:15 114:1 250:24 265:23 266:4,10 chair 97:13,23 98:7 98:9 challenge 64:20 193:23 202:16 challenged 193:24 challenges 5:11 16:22 64:11 193:22 202:11 challenging 64:11 66:4 79:9 194:1 202:17 203:3 chance 38:24 115:21 142:8 195:18 245:6 chancellor 30:14,15 30:17 134:9,14,16 134:18,23 change 17:22 20:10 20:11 22:4,17 71:3 changed 12:17 13:4 17:18,24 19:22 20:1 243:20 244:12 changes 40:15 70:16 changing 149:13 channels 141:19 chapter 168:18 characteristics 14:18,19,21 25:13 characterization 176:19 257:8,21 258:14 characterize 182:21 261:22 characterized 238:21,22 Charles 117:23,24 131:20 132:6,7 chat 183:7,21	185:14 check 66:24 70:7 202:15 207:5,5 211:20 chemistry 118:2 choice 96:17 choose 21:21 chose 169:13 chronological 83:16 134:4 circulate 71:4 circulated 133:14 242:12 251:2 circulates 129:2 131:10 circumstances 49:6 50:14 53:12 civil 138:14 247:4 claim 86:16 171:11 172:2 227:23 claimed 172:14 claiming 259:11 claims 84:6 121:15 121:16 clarification 8:11 82:10 clarify 107:16 120:7 149:11 151:14 216:23 268:13 269:19 clarifying 258:10 265:4 clarity 239:19 class 174:2 202:18 235:9 classroom 140:20 143:10 155:13 158:21 166:13 168:19 185:1 189:12 192:13 classrooms 166:14 173:11 185:5 clean 14:7 168:4 262:23 clear 7:13,15,17,18 8:17,18 19:11	32:1,16 51:23 70:9 79:7 81:10 109:15 113:5 152:14 161:11 163:12 173:3 186:23 210:24 211:7 240:20 clearly 121:6 147:12 189:2 196:23 264:13 269:8 client 76:13,20 90:6 95:22 97:7 101:21 101:23 105:3 111:21 114:4 130:8 140:10 141:5 146:16 150:14 155:17 182:21 204:14 210:21 211:18,20 212:17 218:24 219:2,20 220:19 222:2 223:2,20 224:2,6 227:12 238:15 252:5 277:12 279:15 client's 43:13 110:10 176:17 221:11,16 clip 214:13,16 215:3,14 216:24 217:3,8 219:24 220:21 221:17 222:4,13 223:2 224:8 225:17 226:7,17 234:14 239:20,21 240:3,9 245:24 246:14 249:20 clips 4:10 210:22 211:10,16 223:20 225:17 230:12 236:5 240:10,11 close 83:17 95:24 135:24 136:5,6 165:8 189:21	256:16 260:23 closely 152:17 co-counsel 182:11 co-facilitator 195:14 cochairs 28:16 code 54:19,21,23 55:2 208:18 230:1 cofacilitated 168:12 180:23 181:6,11 cofacilitators 190:20 Cohen 183:14 188:15,16,22,24 200:7 cold 139:10 collaboration 181:18 colleague 181:3 193:12 colleagues 55:15 56:4 180:22 189:10 247:8 collect 72:16 73:15 collecting 40:14 college 33:4 35:14 45:10 104:5 collegial 155:4,6,6 208:16 collegiality 156:20 193:4 Collegially 193:3 color 20:19 87:6 91:3,9 155:13 166:12 168:14,19 combative 189:4 190:9,10,12 come 11:8 50:10 70:14,17,22 123:2 145:12 155:7 165:17 190:17 220:19 225:11 comes 7:14 70:14 128:19 151:3 173:8 194:2 269:10
---	---	--	--	--

comfortable 116:24 125:10,22 127:9 127:20	complain 91:18,23 92:9 103:7 140:10	186:20 187:5,6,8 187:12 195:15	156:20	45:16
coming 13:19 68:14 136:5	complainant 65:22 71:22 82:22 83:6 89:8 94:8 157:21 271:17 273:21	202:17,19,22,24 203:21 204:12,13 204:17 205:4,20 205:21 207:3,12 207:14 208:9 212:11 230:8,9,9 231:20,22 232:18 232:20,22,23 233:16 237:21,23 244:16 255:11,14 255:16 263:3 265:7 268:15 269:7 270:9,15 271:2,17 272:9 273:8,8,17 276:2 276:9,16 277:8 278:19 279:14	complicate 77:17 component 132:15 compose 21:11 composition 159:9 177:20 concentrate 185:24 concentration 237:3 concept 35:8 75:20 concepts 149:8 concern 142:14,15 172:10 266:13 concerned 247:15 264:12 266:20 concerning 113:10 135:9 165:14 207:3 208:9 252:21 concluded 280:24 conclusion 209:4 concrete 280:12 concretely 137:23 condemning 123:16 condition 48:5 138:17 228:18 conduct 46:16 47:5 48:2 49:1 50:13 50:15,16 51:3,10 51:14,16,18 52:6 52:8,14,16,16 53:10,13 54:19,21 54:23 55:2,23 57:8 61:18,19 79:3 189:4 208:18 230:1 conference 139:23 conferences 21:21 21:22 confidential 267:15 267:24 268:1,5,10 confirm 210:15 240:18 confirmed 171:22 conflict 46:3 conflicted 44:17,22	conflicts 12:14 conform 42:15 confront 155:14 166:13 confrontational 198:11 confronting 64:11 188:10 246:23 confused 76:2 211:8 confusing 43:12 70:23 79:5 114:12 confusion 78:1,14 209:14 Connecticut 2:6 connection 158:11 consent 210:3,4,5,6 271:6,10,13 272:16,19 consider 12:2 56:11 71:21 112:4,9 130:15 190:3 222:9 223:8 considered 10:22 80:16 151:18 166:15 considering 82:18 148:19 considers 92:17 consistent 57:16,17 59:5 consistently 59:23 59:24 consisting 48:24 52:6,8 constant 144:20 228:4 constantly 234:16 constitute 16:8 53:11 87:9 constituted 61:8 62:3 100:15 constitutes 50:13 100:3 166:22 constructing 173:9
comment 53:14 58:11 114:19 116:20 137:1 156:1 212:20 235:16 237:15 262:10 commented 197:17 197:18 commenting 110:21 comments 110:20 115:14 commiserated 182:12 Commission 186:10 187:7,12 commitment 138:14 committed 84:24 138:16 260:14 committee 18:22 19:2 20:13 21:11 22:6 27:9 28:2,12 28:18,23 44:9,10 45:24,24 committees 20:18 24:6 common 111:14,16 112:13 124:12 126:16,22 182:1 193:3,4 communication 73:4 137:4 149:6 164:1 community 34:10 34:13,16 244:1,10 244:22 245:8 247:7 comparatively 33:5 competing 235:13	complained 65:22 102:5 103:4 187:17 complaining 62:23 75:23 90:15 91:1 93:7 144:8 172:5 complains 88:8 complaint 9:6,8,10 9:11,11,14 13:9 13:11 14:15 15:5 45:23 56:8,14 61:14,21 62:11,14 63:9 70:14 71:6 71:15,21 75:5 78:20 79:3 80:11 81:1,16 82:18 83:4,7,19,23 86:1 90:2,4,5 100:2,16 103:2,5,20 104:24 105:6,15 107:18 107:19 108:7 109:10,16 110:3 112:10 133:6 139:17,19 141:15 141:20 155:17 157:14,18 158:11 158:14 159:16 161:13 162:9,15 162:18 163:20 164:3,4,10,11,24 165:1,14,19,22 166:1,4,21 167:1 167:3,12,13,14 168:5 169:6 171:13,14 172:1 176:8 178:21 179:5,14,24 180:13,16 181:24	complaints 12:7,9 12:15 13:7,12,13 13:18 14:13 15:12 44:11 47:6 56:5 58:1 62:1,5,5 70:21 71:10 74:7 74:20 75:1 77:21 78:2,6,7,17 79:6 79:11,20 80:13,15 81:11,23 82:3,14 89:9 112:14 136:18 137:11,14 143:12,14 156:23 165:2,3,6 166:21 166:23 186:3,3,13 187:15,21 205:15 230:6 231:15 262:17 272:10 complete 182:17 240:8 completed 141:17 completely 113:8 183:19 212:23 224:18 complex 82:11 compliance 20:2 79:17,17 156:18	conclude 156:20 conclude 77:17 conclude 132:15 conclude 21:11 conclude 159:9 conclude 177:20 conclude 185:24 conclude 237:3 conclude 35:8 75:20 conclude 149:8 conclude 142:14,15 conclude 172:10 266:13 conclude 247:15 conclude 264:12 266:20 conclude 113:10 conclude 135:9 165:14 conclude 207:3 208:9 conclude 252:21 conclude 280:24 conclude 209:4 conclude 280:12 conclude 137:23 conclude 123:16 conclude 48:5 conclude 138:17 228:18 conclude 46:16 47:5 conclude 48:2 49:1 50:13 conclude 50:15,16 51:3,10 conclude 51:14,16,18 52:6 conclude 52:8,14,16,16 conclude 53:10,13 54:19,21 conclude 54:23 55:2,23 conclude 57:8 61:18,19 conclude 79:3 189:4 208:18 conclude 230:1 conclude 139:23 conclude 21:21 conclude 21:22 conclude 267:15 conclude 267:24 268:1,5,10 conclude 210:15 conclude 240:18 conclude 171:22 conclude 46:3 conclude 44:17,22	conclude 45:16 conclude 12:14 conclude 42:15 conclude 155:14 conclude 166:13 conclude 198:11 conclude 64:11 conclude 188:10 246:23 conclude 76:2 conclude 211:8 conclude 43:12 conclude 70:23 79:5 114:12 conclude 78:1,14 conclude 209:14 conclude 2:6 conclude 158:11 conclude 210:3,4,5,6 conclude 271:6,10,13 conclude 272:16,19 conclude 12:2 56:11 conclude 71:21 112:4,9 conclude 130:15 190:3 conclude 222:9 223:8 conclude 10:22 conclude 80:16 151:18 conclude 166:15 conclude 82:18 conclude 148:19 conclude 92:17 conclude 57:16,17 conclude 59:5 conclude 59:23 conclude 59:24 conclude 48:24 conclude 52:6,8 conclude 144:20 conclude 228:4 conclude 234:16 conclude 16:8 conclude 53:11 87:9 conclude 61:8 conclude 62:3 100:15 conclude 50:13 conclude 100:3 166:22 conclude 173:9

Carmen Borges

Page 287

consultations 12:13	196:19 197:1	86:1,18 88:11	279:10	55:23 127:5 231:6
consulted 100:1	215:13 218:9	90:13 95:8,9	counseling 273:12	231:8,15
251:20,20	222:1 223:5 227:1	106:11,24 109:13	273:15	criticize 151:14
consuming 80:24	230:19 231:14	109:14 120:11	count 170:3	criticized 89:15
contact 71:5 73:24	234:11 253:17	123:9 125:11	country 10:13 11:3	173:18
78:16 138:20	260:9 263:1 269:1	129:11 132:9	11:7 119:3 227:16	critique 88:14,21
159:15	275:17 278:17	137:15 141:13	235:19 236:1	critiqued 88:9
contacted 142:3	conversations	145:4 147:15,23	237:8	critiques 90:16
207:2 273:16	127:12 257:21	153:23 160:6	County 41:13	culturally 33:1
contacting 161:2,5	259:12	161:3 162:14	couple 165:19	curious 206:8
content 34:20 135:6	convey 246:18,21	164:13 168:19,20	183:6 245:21	current 30:16,16
147:22	conveyed 103:12	169:6 180:4,6,7	265:3,10,11	243:21
contention 240:5	124:13	181:4,5,13 184:20	270:22	curriculum 34:20
contentious 133:8	convince 234:11	203:24 210:3	course 34:20 72:1	cut 104:6
context 66:18 220:7	convinced 143:20	213:11 214:8	108:12 119:10	cuts 199:9
227:10 237:18	Cooks 188:14	216:12 222:24	139:4 151:6	
continuation 53:15	coordinate 77:23	227:13,17 228:18	158:13 164:12	D
53:16 54:10,12,13	267:1	233:21 244:2	165:23 195:11	D 3:1
Continuations	coordinated 145:7	254:18 255:6	203:14 211:22	DAA 99:2
280:2	coordinating	256:3,13 257:6,12	223:21,24 224:24	damaged 203:1
continue 135:1	130:17 181:5	257:19,24 259:15	courses 96:20	dangerously 136:5
136:4 233:6 256:6	coordinator 29:7	261:8,14 262:5,6	court 1:1,22 6:7,7	dark 235:21
279:16,17 280:3	64:5 85:24 97:13	267:24 268:7	6:10 12:24 27:6	data 3:15 37:18
continued 270:11	97:23 98:7 130:13	272:13 273:21	47:24 48:1	40:14 66:14 72:23
279:22 280:7	130:20 145:6	275:5,6,9,11	cover 47:5	database 22:12
continues 33:1	coordinator's 98:10	277:9	Covid 13:24 14:3,6	date 1:16 107:6,24
256:15	cop 133:11 137:6	corrected 108:4	14:10 68:11,14,19	113:16,21 142:8
continuing 54:14	137:15	correcting 107:23	71:3 76:11 77:1,6	160:7 164:15
255:21	cope 79:22	212:1	78:13 119:13	168:5 185:17
continuous 27:19	copies 93:20,23	correctly 30:24	crazy 202:3	266:22 278:23
contradict 72:13	178:16	34:23 42:24 45:13	create 18:10,13,19	dated 133:24 157:6
contrary 252:14	copy 94:14 95:2	46:17,20 49:7,19	35:17 40:23 84:12	158:3,8 159:19
contributor 218:8	267:19	50:17 87:3 92:22	93:13 168:4 228:5	160:7 162:2
controversial 189:4	corner 243:13,17	94:1 96:21 97:15	created 13:17 77:18	180:16 208:3
convenience 228:1	correct 7:20 10:23	97:23 118:10	84:6 109:6 270:2	239:7 240:22
conversation 6:19	10:24 17:8,9	121:1 126:2 136:8	creating 6:7 23:7	251:23 255:1
70:2,4 92:14	27:14,15,21 28:16	185:6 256:11,12	40:15 41:3 136:13	265:24 266:5
109:12 110:24	28:17,20,23 32:9	256:19,20 260:18	227:24	268:19 269:24
112:3,8 120:8	33:8,9,12 34:6,7	267:3 269:3	crisis 119:4	dates 107:17 164:2
123:11 124:13,20	38:17 40:19,24	279:18	critical 55:21 111:4	166:8 199:9
129:9,10,14 133:8	41:10 44:2 45:14	correspond 253:21	126:15 127:1	268:19
135:1 136:11	50:18 51:24 53:5	corroborate 262:22	147:22 148:20	Dating 162:16
151:2 167:5	56:20 58:22 59:12	counsel 9:1 86:18	151:5,7,17,23	daughter 10:16
172:11 180:23	61:21,22 62:16	108:5 114:9	152:15 170:10	235:8
181:6,10,11,17,17	68:17 69:12,19	178:11 184:19	critically 148:12	Dawn 121:19
189:7 195:19	80:12 81:14 84:8	199:17 275:14	criticism 45:11	day 96:16 108:14

108:18 158:10 165:8,8 166:4,4 206:9,10 255:6 266:17 268:21 275:17 279:7 days 164:17,18 165:19 207:2,14 De 1:4 5:6 10:21 92:18,24 95:23 144:8 148:11 151:22 206:2 210:21 212:17 222:2 252:5 255:4 257:21 271:1,5,9 271:14,23 272:1,4 272:5,9,10,11,16 272:20,22 273:1,4 273:14 277:8 de-escalate 189:7 deal 127:5 136:24 208:21 dealing 85:4 dean 21:12 dean's 21:5 Dear 119:2 120:10 debate 189:6 December 251:24 252:6 253:3,5,6 decide 13:8 17:1,4 102:23 decided 103:1 deciding 253:15 decision 77:8 85:16 145:24 decisions 64:10 122:21 123:1 236:3 deconstruct 185:4 dedicate 10:1 dedicated 34:16 defend 45:10 55:16 defendants 1:9 2:13 240:7 defense 247:6 define 18:15,23 51:3,13 52:19	55:8,12 57:1 62:5 65:5 defined 15:12 23:10 24:11,11,13 47:7 48:19 53:7 55:10 58:20 78:12 defines 47:22 54:18 defining 24:9 58:8 definition 24:10 47:18 48:23 49:12 52:7,11 54:7 59:14 60:5 117:20 121:23 130:22 136:6 definitions 47:9,15 47:19,22 58:12 64:13 DEI 27:9 29:22 30:13 32:1 196:23 demand 79:20 demanding 35:22 36:5 demands 36:11 demonstrate 246:1 246:15 Denial 5:20 denies 48:3 deny 122:18 dep 26:6 department 21:5,8 21:9 25:1 29:3 92:15 99:17,18,20 99:21 103:12 115:20 123:10 145:2 150:1 195:17 280:18 departments 23:5 126:22 depend 154:24 depended 176:22 depends 50:13 51:12 53:11 60:24 72:6 151:20 154:21,22 155:1 193:23 194:21,23 230:4,4	DEPONENT 1:15 deposed 5:15,17 221:9 deposition 1:13 3:13 5:15 6:8 7:8 8:20 9:16,21 10:2 16:5 26:14 27:2,3 63:24 210:21 211:6 224:24 239:21,23,24 240:1,2,7 245:21 258:21 259:14 265:6 267:22 278:3 280:24 depositions 6:3 derailed 232:24 derivative 91:4,10 91:11 derive 16:9 derogatory 49:18 describe 114:14 123:4 124:9 133:18 157:17,18 164:22 189:3 190:9,19 238:4,9 described 31:7 60:23 61:17,17,20 85:21,22 103:22 137:16 155:9 175:17 217:6 describes 205:24 describing 60:4,6,9 177:10,10 190:17 description 21:13 137:17 190:9 191:4 226:18 deserve 16:23 deserves 17:1 designate 240:2 designated 210:23 239:21 241:8 designation 209:13 239:19 240:21 267:24 despite 7:16 detail 278:22	detailed 63:21 details 66:23 71:7 detain 138:12 determination 104:9 264:4 determine 62:18 71:8 determined 138:24 181:7 detract 85:8 detrimentally 49:5 devastated 198:17 developed 167:5 developing 173:20 development 34:17 172:15 deviated 228:14 234:2 deviates 224:18 deviating 224:9,13 225:8 Di 5:13 9:6,8,10 90:6,22 105:17 109:21 110:18 114:4 130:9,18 139:17 141:6,15 143:17 145:4 149:18 150:14 151:7 155:22 158:10 162:14 165:4 166:24 168:11 173:5,14 182:22 184:2 187:15 204:14 207:12 211:5,18 223:2 228:3 230:12 239:22 240:7 251:3 252:20 258:13 260:21 261:2,8 262:16 263:2 269:6 270:9 276:8 276:15 278:19 279:15 dialogue 161:22 174:6	difference 15:10 51:10 52:15 54:5 78:19 different 13:10,12 19:1,1 22:18 25:12,13 31:7 42:12 46:1,2 51:7 51:9 59:4 91:12 107:17 113:8 147:6 171:23 174:10 183:2,10 191:14 211:4,16 227:2 233:4 237:20 239:24 243:19 248:14,16 differently 14:16 83:4 148:20 149:13 150:6,10 difficult 8:2,2 20:9 difficulties 5:11 dig 182:4 direct 7:12 154:19 155:2 162:21 242:15 256:13,14 276:17 directed 233:6 256:6,23 directing 161:19 direction 176:2 directions 64:6 directly 90:22 109:9 112:11 133:1 155:18 director 29:18 57:14,21 75:12,15 98:1 99:7,9 192:20 230:2 231:16 232:3 256:5 directs 7:13 disability 14:23 disagree 98:6,9 256:17 264:10 disagreed 238:6 disagreeing 100:6 263:10 264:14
---	--	--	--	---

disagreement 100:5 189:5 231:10,12 233:4	discriminatory 203:13 249:6 255:20 256:8	225:7,8,12,13 226:13 227:7 231:8 233:11,13 234:2 236:6,8,9 239:5 257:9 276:15	33:22,23 34:2,12 34:17,19 35:17,19 35:20,21 40:24 41:3	74:1 103:21 166:7 178:13 183:8 210:24 265:10
disagreements 190:10	discus 227:4		diversification 20:15	doing 16:20 17:7 46:23 80:5 97:15 108:6 149:13 150:9 152:24 186:6 197:1 212:1 234:19 246:24 247:1 248:5
disclosed 83:19 216:15	discuss 96:16 100:7 103:13 110:24 142:4,12 146:20 152:4,21 159:4 160:19,22 161:2 162:10,19 163:20 169:3 202:20 203:4 228:22 249:15 254:2 266:14 275:21	discussion's 173:23 discussions 141:1,2 149:24 150:5,11 152:23 176:5 258:14 264:3	diversity 20:22 23:10,16,18,22 24:10,11,16 27:9 28:2 31:7,9 32:8 32:11 33:12,13 34:21 35:8 39:22 42:1 97:14,24 98:6,10 99:4 114:22 118:9 181:20 182:1 260:14 270:12 279:17 280:7	dominated 174:2 door 138:20,21 double 26:3 45:5 207:5,5 249:3
discomfort 129:7 176:17 197:5,10	discussed 9:19 37:10 40:21 64:17 86:1 90:21 109:20 109:23 110:5 145:1 155:12 170:8 173:7 224:12 225:9 228:15 231:3,7 261:12 276:8 277:14,15	disengaged 225:16 disheartening 139:5	divest 151:11 division 99:15 102:7,8,22 202:20	doubt 249:5 downright 37:22 Dr 10:21 252:5 271:1,5,9,14,23 272:1,4,5,9,10,11 272:16,20,22 273:1,4,14 279:20
disconnection 197:10	discusses 158:14	dismantled 249:13 dismantling 120:3 dismissed 228:1 display 247:24 displaying 189:20 dispute 114:14 disrespect 208:22 246:15,18,21,23 247:2,3	document 10:10 26:14,23 27:8,20 27:23 37:15 41:8 41:12 42:22 46:12 48:9 83:18 102:23 103:1 128:12 157:5,11,13,18 160:6 166:11 168:21 178:4 179:2 185:16,22 199:3 211:13 239:7 241:9,10,12 241:15 250:10,24 254:14,15 255:12 265:22 266:1 267:6,11,14,16,20 268:4,18 269:20	draft 27:10 31:12 drafted 21:13 242:8 drafting 242:10 drag 202:4 dramatic 140:16 drastic 140:16 draw 21:19 drawing 142:19 165:15
discontent 189:3 discourse 173:11 discourses 185:1 discovery 47:14 216:15 224:1 243:24 244:22 245:8	discussing 23:5 40:20 83:18 96:5 147:8 148:8 149:12 152:2 194:2 226:11 228:3,17 233:12 237:9 247:10 248:11,12	disrespectful 85:22 92:20 208:17 225:15 246:12	divest 151:11 division 99:15 102:7,8,22 202:20	drawn 19:5 drive 104:16 due 45:12 duly 5:2 dumb 218:14 duration 50:15 53:13 duty 139:5 dwelt 131:15 dwelled 275:10 dynamic 131:4
discriminate 16:13 17:5 104:14 123:7 130:23 137:23	discussion 5:8 62:9 113:9 116:14 118:21 120:14 128:16 139:20,24 140:9 149:22 158:10 161:20 166:12 170:6 173:23 174:3 178:18 188:11 189:2 195:21 197:11 198:10 206:12 212:5 222:3 224:19,20	disrupting 167:2 disruption 167:1 disruptive 54:18 170:14 dissect 66:20 dissecting 229:20 distinguish 53:20 distributed 64:19 156:8,8 District 1:1,2 9:12 distrust 203:9 disturbed 120:14 disturbing 120:17 diverse 18:14,15,19 18:21,23 19:5,6 20:14 23:7 24:8 24:14,15,20,22 25:3,10 30:21 31:5,9,13 32:18 33:2,5,15,16,18	divest 151:11 division 99:15 102:7,8,22 202:20	draft 27:10 31:12 drafted 21:13 242:8 drafting 242:10 drag 202:4 dramatic 140:16 drastic 140:16 draw 21:19 drawing 142:19 165:15
discriminated 187:18				
discriminates 174:1				
discriminating 38:19				
discrimination 11:19,24 12:8 15:6,7,13 16:16 16:19,21 17:7 46:15 47:4,6,7 104:7,10,24 105:4 105:6,17 109:22 144:1 169:19 180:20 186:15 196:18 203:12,19 203:20 204:3,14 204:16,20 226:21 227:24 230:18 233:24 234:16,23 235:16,20 236:4 237:15 239:3 248:10 255:24 263:20,21 273:8 273:17 276:9,17 277:9,12,15				

e-mail 72:19 73:2,4 73:6,8 87:2 92:19 93:1 113:15 114:1 114:4,5 115:5 116:10,10,18 117:5,22 118:14 118:18 119:2 120:17,19,20,23 121:16,17,19 124:23 125:15,20 126:15,19 128:1 131:7,8,10,21 133:23 134:5,6,8 134:13 135:11,14 135:17,20 159:18 159:20 160:2,5,9 160:10,16 161:1 162:1,6,22 163:21 164:5 165:15,23 185:17,24 207:19 250:16,18,23 254:23 257:3,20 258:16,18 264:20 265:23,24 266:3,6 266:22,23 268:19 268:20,23 269:2 269:12 275:7,8,16 276:7,15 277:11	Earth 115:8 easier 20:8 78:18 122:13 easiest 265:18 easily 105:23 262:4 Eastern 1:2 9:12 easy 117:1 125:22 127:9,20 edited 216:10 education 30:21 49:4 59:11 educational 74:8,11 74:13,15,17,24 75:2,11,16 77:10 150:5,5 educators 34:16 EEOC 187:14 effect 68:11 149:2,3 236:12 effort 18:13 182:1 259:15 efforts 181:20 egregious 168:11 171:17,20 204:15 204:16,20 206:1 238:22,24 eight 125:7 either 113:2 172:1 210:10 214:11 216:4 280:16,16	273:19 employment 48:6 49:3 59:11 encompass 15:24 encourage 263:13 encouraged 41:1 56:19 78:23 148:11 endearing 188:6 ended 65:1 66:7 71:1 177:1,2,4 198:16 201:4 enforce 44:13 45:17 186:14 enforced 44:16,23 50:5 enforcement 18:11 46:2,3 enforces 87:10 105:13 146:12 enforcing 43:20 54:8 87:7 engage 148:12 151:2 152:5,8,11 173:23 engaged 137:19 155:6 159:6 engaging 234:15 Engineering 11:18 English 93:23 99:21,22 115:20 139:24 141:2,3,4 195:12,16 entire 83:5 138:2 150:9 169:18 224:1 227:2 240:9 entitled 9:20 entrance 239:11 entry 192:8 environment 84:7,8 84:12 109:6 136:2 136:7,13 228:1,6 equal 17:23 20:3,4 20:6 50:22 equity 27:9 28:3 74:8,11,13,15,17	74:24 75:2,11,17 77:10 97:14,24 98:6,10 114:22 129:7 181:20 182:1 especially 122:1 Esposito 191:6 197:17 214:1 218:21 222:13 ESQUIRE 2:4,10 essence 167:23 establish 79:6 established 13:6 et 1:8 ethics 20:2 42:23 44:17,22 55:15 79:16,17 93:5 135:24 ethnic 19:20 ethnically 33:1 ethnicities 19:2 evaluation 65:19 130:14,15 evaluations 64:16 65:6,9,24 67:5 110:17 261:12,14 261:23 evening 265:1 eventually 251:16 everybody 14:20 23:15,20,20 24:13 24:14,19 25:11,13 31:10 76:1,2 154:12,12 everybody's 24:19 24:20 34:1,2 66:20 120:6 everyone's 24:15 33:16,23 evidence 35:21 36:5 36:13,17,21 67:8 72:2,5,7,9 74:2 84:23 88:11 137:22 139:9 238:14 EWING 2:9	exact 140:7 200:11 214:16 exactly 10:6 22:15 24:24 43:10 48:23 58:14 63:2,6 69:11 76:11 79:4 82:9 99:11,22 100:9 112:2 118:6 119:19 131:12 141:7 148:1 155:20 193:10 204:1 205:16 206:20 231:24 243:6 244:11 245:12,17 246:13 280:13 examine 26:1 179:22 192:10 251:10 254:9 279:10 examined 5:3 32:24 example 45:20 46:7 63:13 101:12 152:14 examples 61:3 63:11,15,18 144:2 152:3 153:16 154:5 excellence 244:1,8 244:22 245:8 excerpts 210:22 212:13 246:17 exchange 45:11 126:19 129:24 130:7 133:23 Exchanging 55:23 exclude 25:14,17 excluded 24:22 excluding 223:21 exclusion 25:3,8 exclusively 164:10 excuse 19:22 20:4 29:19 32:21 37:3 39:12 43:24 60:6 65:2 121:13,16 123:6 145:12,21
---	--	--	---	--

195:23 208:15 211:20 218:24 219:3 247:5 259:24 274:7 executive 19:10 exercising 123:7,17 123:18 exhibit 25:21,22 26:6,9,14,16,23 27:7 37:1,5,10,12 37:14 42:19,20 46:11,13,15,24 55:14 56:24 59:7 83:11,13 93:4 98:12,14 106:10 106:14 107:2,4 108:8,14,17,20,21 113:15,18 125:3,5 125:18 128:11,13 130:3,4 133:22 134:1 157:5,8,23 158:1,4 159:18,21 162:1,4 163:11 165:12,24 166:7,9 182:5,9 183:8 185:16,20 198:18 201:9 204:13 205:5,7 207:7,16 207:17 208:2 209:13 210:19,20 210:23 211:5,7 212:14 239:6,11 239:12,13,22,24 240:4,13,19,21 241:6 243:7,9 244:4,17 245:10 246:7 250:7,8 251:22,23 252:1 254:11,13 259:23 259:24 260:1,2 265:20,22 266:10 267:9 268:5 269:19,21,22 274:3,5,6,9,16,17 274:17,20 275:7 275:12,13 276:6	277:1,19,19 exhibited 174:9 exhibits 4:20 26:1 46:24 133:15 239:10,19 274:6 274:21 exist 89:5 exists 132:21 279:11 expand 18:10 79:22 184:16 expanded 24:10 76:1 79:10 expansion 79:19 expect 42:4 127:4 143:12 154:5 191:22 192:3,20 203:12 247:4 expectation 42:3 271:20,24 272:23 expectations 32:5 55:6 242:20 expected 81:16 experience 37:22 45:16 60:19,20 61:5,12 85:8,11 95:16 117:20 143:5 203:11 206:16 249:21 271:16 experienced 84:11 89:12,14 171:7 189:6 204:20 expert 123:20 explain 8:6 11:1 12:5 53:14 54:4 59:19 70:12,14 72:14 93:1 105:2 168:8 180:19 194:13 205:21 212:6 234:19 236:22 280:9 explained 6:4 23:11 54:7 193:19 224:10 explains 84:15	174:9 explanation 82:24 238:5 254:21 explore 219:14 explosion 78:5,7 exposed 144:10,12 183:19 exposure 144:20 express 155:23 172:10 expressed 87:6 153:19 expressing 170:13 expressions 190:1,2 extension 6:6,10 extent 8:15 23:8 62:24 63:3 101:21 eyes 182:14 <hr/> F F 16:20,24 17:1,6 F-R 69:14 face 78:15,16 241:9 facial 190:1 facilitate 30:22 facilitating 181:10 fact 144:14 145:1 159:12 161:12 169:12 217:17 223:11 228:21 245:7 248:11 factors 37:24 facts 70:19 78:22 258:1 faculty 17:4,4 21:12 21:16 29:2 30:22 32:12 33:6,7,12 33:15,19 34:5,12 34:14 35:10,17,23 36:6,14,19 38:11 38:19 39:1,8,12 40:7 43:22 44:6,6 44:7,9,9 45:22,24 45:24 50:24 56:12 63:11 64:3,16,19 67:21 72:18 73:2	74:20 75:24 86:24 87:1,6,17 90:9 92:18 93:12,22 94:14 95:2 96:7,8 96:10,15,19 99:14 100:5 102:10,12 102:18 109:13,15 111:1,16,18 112:3 113:1 114:17 115:23 116:1 122:4 123:6 127:4 133:9 140:9 145:8 146:20 147:10 153:17,18 156:10 156:23 158:16 168:18 169:7,10 176:4 191:13,15 197:2,2 230:2,6 232:6 247:7 260:22 261:1 276:3 faculty's 72:21 110:14 failing 150:9 247:24 fair 144:19,22 260:7 faith 66:11 fall 60:17 76:16 falling 193:20 falls 52:17 53:15 false 230:5,9 familiar 44:5 47:1 67:15 114:8 family 138:18 234:21 famous 91:3,9 famously 50:1 far 38:15 185:6 189:2 247:14 FARRELL 1:22 Farrellreporting... 1:24 fashion 20:19 fast 166:3 218:23 221:21	faster 81:7 167:20 174:13 fat 214:16 fear 110:4,9 federal 9:12 104:6 211:23 234:23 235:16 feedback 151:15 feel 8:6,11,12 31:23 93:17,19 117:5 122:11 128:1,4,7 128:8 136:3,4 147:15 174:6 176:5,8,15 264:11 feeling 100:18 102:11,13 127:12 136:11 144:20 feelings 83:2,3 87:1 87:14,18,23 88:1 100:21,22,24 106:5 232:14 247:13 feels 57:10 87:2 89:14 93:20 220:8 247:13 fellow 156:23 230:6 232:6 felt 87:6 89:11 97:12 120:14 142:16 144:14,24 174:4 175:23 176:2 177:10,16 192:17 256:7 279:22 female 67:4 131:4 218:8 222:15 235:12 FERPA 86:17 267:16 field 91:3,10 123:23 169:14 fields 124:3 figure 61:3 80:22 figured 81:17 184:13 file 13:7,9,11 56:14
---	--	---	---	--

67:24 70:21 76:3 78:2,20,24 79:3 103:2 112:14 142:9 165:6 186:3 filed 155:17 165:2,3 166:21 187:6 202:17,19 203:20 231:22 255:23 265:8 files 230:7 filing 71:6 filled 80:7 141:17 final 37:8 120:2 251:5,19 Finally 34:20 find 6:9 82:20,23 82:23 84:23 156:14 171:4 212:20 214:23 220:10 224:7,9,12 232:16 233:17 261:9 finding 204:2 finds 90:15 96:24 fine 45:6 47:17 199:15 229:4 232:4 250:6 fingers 214:16 finish 28:8,11 36:4 63:3 114:11,12 271:9 firm 164:18 first 5:2 26:13 27:13 31:2 33:4 34:11 35:14 46:19 52:5,6 69:14 70:17 71:5 83:22 84:2 86:3 95:13 98:17 109:9,22 116:18,23 121:11 121:15 124:24 125:2,18,19 126:23 130:6 131:23 135:19 140:23 157:6 158:13 163:1,16	172:9,17 182:6,15 183:6 185:24 199:9 200:21 205:5 211:17,18 212:4 230:14 238:3 243:1 265:5 271:9 272:15 273:7 274:8 five 13:22 92:16 110:19 196:5 261:15 fives 236:19 flip 168:22 206:4 flipped 175:4 flipping 190:19 flooded 78:4 80:11 80:13 flooding 78:16 Floor 2:11 flows 97:9 Floyd 119:9,10,15 120:5 128:18 flushed 80:20 focus 12:8,12 19:12 24:18 74:17,18 172:8 174:13 185:11 222:1 225:1,7,7,8 226:1 focused 23:23 follow 80:23 111:23 112:21 179:12 246:9 248:2 follow-up 253:18 269:13 followed 112:23 135:12 139:23 following 34:11 113:20 127:15 179:21 262:3 follows 5:3 127:10 234:6 footer 118:3 132:7 force 113:11 forcing 170:13 foregone 209:4 forgive 194:5	form 15:14,15,19 17:10 20:20 22:5 24:17 25:5 27:7 31:14 32:10 33:17 35:6 36:9 38:20 39:3,24 44:18 46:6 52:21 53:9 53:23 54:11 56:1 56:6,13,21 58:24 59:16,21 60:11 80:4 82:15 84:14 87:15 88:2,23 89:10,16,21 90:18 93:10 94:5,10,17 95:17 97:2 98:2 101:1,9 104:18 105:9,19 112:12 125:12 126:20 127:14 128:9 129:16 131:1 132:13 136:14,19 141:17,17,18 145:5,14,23 146:7 147:4,16 150:2,17 151:19 152:10,19 154:20 157:1,20 157:20 167:18,18 168:5 169:23 170:5,18,22 176:14 177:8,22 192:1 193:13 204:22 207:18 210:16 227:19 228:7,13 231:17 232:8,19 235:4 236:20 237:11 238:7,17 247:16 249:24 257:13 258:15,23 259:17 263:22 264:8 268:16 278:6 280:8,20 formal 204:13 205:20 formalities 6:10 formality 6:19	format 157:17 240:3 formed 61:15,20 formerly 29:19 forms 167:16 forth 10:10 42:9 77:10 121:23 183:24 forum 135:1,3 forums 135:4 forward 166:3 178:3 179:13,15 180:11 215:8 218:23 219:20 220:17 221:21 222:18 225:13 found 61:8,14 62:2 120:17,23 121:8 139:9 153:13 204:4 208:15,21 208:22 222:4 223:12 240:1 246:11 248:1 251:11 259:23 278:13,16 four 13:22 17:21 19:12,14,16,17,23 23:10,23 24:3 40:6 45:2,5 242:24 243:23 244:12 246:5 fourth 86:23 fragile 133:7 frame 13:23 260:5 free 8:6,11 24:6 45:10 55:16 256:17 266:18,19 freedom 149:6,6 frequency 50:15 53:13 frequently 144:13 260:18 Friederike 69:5,7,7 69:9,15 70:1 92:12 96:1 99:9 100:6 102:8 103:9	103:11,23 104:1 105:2 109:12,17 109:18,23 110:6,8 110:14,21 111:3,7 111:13,18 112:2 113:3,6 161:9 202:20 251:3 253:15 254:2 255:23 260:8,9,11 260:19,19 261:7 262:3,3 263:1 264:9,13 270:4,8 270:14 277:24 278:10 280:4,5 Friederike's 99:8 109:19 frivolous 81:11,23 81:24,24 82:14 front 140:19 201:20 frozen 196:24 full 12:11,20 216:9 function 92:9 153:15 183:21 functioning 69:1 153:14 further 106:22 142:4 167:4 182:4 259:5 280:9,21
G				
game 241:2 gather 72:2,5 74:1 gears 42:6 gender 14:23 99:23 100:3,15 189:9 genders 131:5 general 42:23 67:11 73:10 generalizations 174:7 generally 44:3 143:4 generation 33:4 35:14 generations 149:5 genocide 50:2				

George 119:9,10,15 120:5 128:18 German 69:12 gesticulating 219:12 gestures 171:15 172:3,4,8 173:15 174:16,16 175:9 175:10 191:17 194:7 getting 8:1 13:11 62:13 78:11 148:16 188:3 194:13 209:2 241:4 249:3 264:18 gist 150:11 give 27:19 54:2 71:15 143:20 152:3,3 154:4,4 154:14 159:22 166:19 175:14 190:24 191:1 195:18 197:19 199:17 209:1,19 210:5,6 211:12 250:20,21 259:22 given 143:6 211:6 212:11 215:19 232:3 238:14 239:23 242:17 gives 123:24 124:2 giving 16:20 17:6 67:3 92:20 glad 10:14 107:23 gleefully 108:6 Gmails 114:10 go 5:7,14 13:9 21:21 27:6 40:2 44:8 45:22 47:10 54:2 62:8 64:24 66:8,14,24 71:8 72:18 73:2 74:23 77:3 78:10,19 83:9 86:10 96:14 106:11,22 114:10	114:11 115:5 134:3,4,23 139:13 145:15 146:20 148:11,18 149:11 149:20,21 150:19 151:1 154:7 167:19 175:20 178:17 180:9 189:2 194:10 195:5 198:18 200:5,6 201:9,23 204:24 205:4 209:5 233:6,15,17 234:1,10 239:14 239:16 245:7,10 254:8 255:3 265:19 274:18 goal 18:20 goals 18:9 goes 40:10 45:23 46:1 49:15 59:23 92:24 95:7 181:15 222:1 223:21 225:23 267:13 going 6:20 8:16 25:24 27:12 32:5 37:19 47:1 50:12 53:1 56:24 70:23 74:7 75:1 99:24 107:15,23 110:24 112:3,6,9 113:22 117:2 124:14 125:24 127:22 138:12,16 148:14 157:23 161:23 166:20 176:1 182:6,17 192:7 202:3 204:6 208:8 223:19 228:23 236:18 240:2 241:11 250:21 265:12,22 276:1 277:1 gonna 5:14 6:14 8:19 15:17 25:20 26:13 37:1 42:6	42:18 43:2 46:11 47:13 55:1 56:8 86:14,18 96:11 97:10 98:12 101:13 107:8 113:15 124:18,19 132:2 133:22 135:16 157:5 162:1,21 166:7,17 166:19 170:8 178:9 182:5 184:19 185:9,9,16 206:5 209:1 211:10,13,15 217:12 218:4,23 220:17,21 221:19 221:21 222:18 224:21 239:6 243:9 248:22 250:7,10,19 251:22 254:8,13 259:7,22 263:6 264:20 265:2,16 267:5 279:9 good 10:14 96:17 96:23 110:15 153:23 172:15 199:11 203:7 261:8,11,17,23,24 265:1,1 gotta 241:2 government 37:19 grab 26:13 Grace 28:15 29:1 155:18 156:6 165:1,3 166:23 168:13,17 169:5 169:12 172:2,9 173:19,24 180:16 183:15 192:16 194:16 195:8,10 196:3,6,12,14,17 196:21 197:21 198:16 212:13 214:7,8 215:22 217:24 234:8	235:7,14 238:15 244:16 272:11 grade 105:1 gradually 79:24,24 graphic 49:17 grateful 108:5 211:24 grew 37:9 122:8 group 152:1 174:8 228:3 grow 89:20 grown 56:12 90:11 127:4 177:20 growth 30:22 guarantee 8:12 guess 11:22 18:1 20:23 25:2 51:21 98:17 99:4 102:13 103:9 122:7,20 136:23 156:9 169:17 176:22 177:23 179:17 207:19 237:12 247:14 249:21 252:9 265:1,11 267:6 268:5 guessing 8:14 guilty 139:10 208:21,22 guys 197:20 221:6 222:23 223:17 238:8 264:19 277:14 gymnastics 235:9 235:14	hands 183:16 handwriting 98:19 102:21 107:10,11 109:5 handwritten 70:8 98:13 107:3 157:24 260:5,7 269:24 274:23 277:20 278:21 279:11 hang 274:5 happen 71:9 91:12 129:17 161:12 256:21 happened 103:10 124:21 138:11,21 142:2 161:15,18 164:3,17,18 165:1 171:3 207:1 208:7 208:10 217:1 232:10 235:22,24 236:1 247:3,21 248:4 249:5 253:18,20 255:18 258:5 happening 71:3,7 139:8 175:16 177:11,15 happens 112:13 131:19 215:9 232:5 happy 26:19 196:23 199:13 270:11 279:17,24 280:2,3 280:5,6,10,16,17 harangue 170:16 harangued 147:1 harass 51:22 146:5 harassed 144:20 harassing 145:11 145:20,21 212:20 215:14 219:7 220:10 221:17 222:5 223:9 224:8 230:12 232:7 247:14
--	---	--	--	--

harassment 46:16 47:4,6,7 48:10,19 49:15 50:13,20 52:7,17,20,22,23 53:4,11,15,20,21 53:21,22 54:5,6,6 54:7,15 57:18 59:9 61:8,16,21 62:3 146:16 170:2 170:4 238:22 hard 182:14 HARRIS 2:3 Harty 135:12 137:2 Harty's 135:17 hazy 68:11 head 6:12,13 40:1 52:3 75:16 92:15 99:15 102:7,8,22 202:20 header 134:13 160:9 245:16 250:13 heading 38:5 48:10 176:1 201:11 headings 38:4 headlines 140:16 140:18,22 141:8 healing 128:17,17 hear 8:4 10:14 71:14 94:20 211:13 212:10,22 212:24 214:4,14 215:6 216:4 217:23 223:13,14 225:12 236:6 261:3 heard 10:15,15 91:10,18,23 103:6 104:4 105:5 106:16 138:3,5 154:17 156:4,16 163:1,16 176:20 212:7,16,23 214:4 214:13 215:7 219:7 221:17 222:9,15 223:11	223:17 230:12 232:3 235:10 236:5 262:14 hearing 217:4 heated 175:16,17 175:17 heavy 133:19,19 held 5:8 62:9 83:10 139:14 178:18 209:10 239:17 254:10 271:21 272:24 hello 266:6 help 160:12 216:23 helpful 199:16 hi 132:19 266:18 268:24 hide 216:16 217:14 high 35:9,11 81:18 195:2 242:2 higher 35:17 42:4 92:15 highest 41:17 highlighted 114:16 242:24 highlighting 172:19 172:19,20 Hill 2:6 hire 24:6 34:14 203:7 hired 76:13 202:16 hires 114:16 hiring 18:8,8 20:11 20:13,18 21:4,11 22:23 32:9,11 35:5,7 40:24 41:4 202:15 Hispanic 38:3 39:17 50:9 214:4 Hispanics 19:18 25:2 historical 227:10 historically 236:14 history 11:7 138:2 228:19 235:19,21 236:6,16 237:19	hmm-hmm 6:18 hoc 27:8 28:2 Hold 41:12 holds 132:16 Holt 115:15,17 118:18,22 123:16 128:16,20 129:13 163:8,13 Holz's 117:14 home 265:3 honest 31:23 231:14 honestly 101:19 248:18 278:12 hope 183:18 hoping 167:19 211:14 hospital 138:16 hostile 84:7,8,12 97:15 109:6 136:2 136:6,13 156:17 172:10 189:9 191:3 228:1,5 256:8 hostility 159:3 hotline 77:18,19,22 79:15,16,16 hour 201:1 206:7 216:18 217:20,22 223:21 227:4 hours 10:3,4 house 91:23 hover 199:18 HR 241:18,21,22 242:6 huge 77:21 huh 41:20 108:2 119:9 163:4 183:9 222:23 242:17 human 186:10 187:7,10 241:23 241:24 242:3 hurt 259:3 husband 11:10,14 <hr/> I	I-N-O-U-E 141:13 idea 49:11 151:16 237:24 ideas 45:12 93:2 127:1 152:3,23,24 170:10 173:18 191:1 193:7 identification 25:22 26:16 37:12 42:20 46:13 83:11 98:14 107:4 113:18 128:13 130:4 134:1 157:8 158:1 159:21 162:4 166:9 182:9 185:20 240:13 241:6 243:7 250:8 252:1 254:11 260:2 265:20 267:9 269:22 identified 34:6 222:12 identify 9:2,18 12:3 21:1 33:3,3 62:23 63:1,2,4 97:6 100:14 102:11,18 185:2 218:16 257:20 identifying 122:8 identity 102:12 ignore 121:17 193:11 illegal 174:1 196:17 196:18 210:2 234:15 247:1 248:6,12 249:17 illness 7:4 imagine 177:15 immediate 17:13 immediately 80:1 219:24 231:22 immigrant 227:15 implement 149:24 implementing 18:3 18:7 29:24 30:13 40:13,18 150:4	implicit 88:14 implicitly 88:6,8 90:16 implied 58:16 88:16 implying 88:20 importance 23:6 important 34:14,19 34:21 42:1,3 67:17 95:4 161:20 imposition 145:9 impossible 37:22 impression 149:18 177:3,4 197:21,24 198:15 improper 154:5 185:13 improve 263:13 inaccurate 159:1 224:14,15,16 225:3 228:2 inappropriate 46:16 47:5 123:15 124:13 153:4,5,20 154:10 174:15,16 195:3 208:16 incapable 250:4 incident 54:13,13 57:19 84:17,19,22 102:14 106:11 107:12 109:20 119:9 138:8 163:13 164:20 168:11 171:17 203:1,4,10 205:3 205:24 206:1 208:10,10 255:21 incidentally 25:24 30:12 31:22 41:15 51:3 95:10 126:12 130:8 137:6 155:11 163:19 183:6 236:16 incidents 84:3 86:5 89:2 include 49:16,21
---	--	---	--	---

57:7 73:19 85:14 151:5 273:12 included 85:6 163:3 163:11 includes 31:10 including 49:1 50:14 52:9 53:12 85:4,7,23 123:1 154:11 177:11 206:17 inclusion 27:9 28:3 97:14,24 98:6,10 99:4 114:22 181:20 182:1 inconsistent 252:13 incorrect 176:19 increase 79:23 81:10,11 82:13,13 increased 80:15 81:22 increases 130:15 Indian 39:17 indicate 67:5 132:2 136:10 153:20 200:24 indicated 10:10,21 154:4 161:6 indicates 153:22 indicating 55:4 132:5 144:3 186:16 212:8 indication 66:10 110:8 129:13 153:14 individual 48:3 65:23 83:22 95:8 147:9 183:4 231:1 237:20 273:7 individual's 48:6 49:3 59:10 individually 147:5 237:18,22 individuals 50:17 50:19 173:18 ineffective 36:14,18 inequality 184:24	inequities 173:9 192:13 inexact 214:17 inflammatory 173:24 174:22 175:1 influence 262:16 263:2 influenced 262:19 inform 56:9 information 20:24 22:5,7,11 23:8 37:2 47:8 66:24 70:20 71:7,19,22 72:22,23 85:18 86:17 103:15,17 153:10 162:20 167:14 186:21 193:4 205:4 267:16 273:14 initial 225:22 255:11,14 initially 75:1,2 255:22 initials 211:6 initiative 13:14 initiatives 34:22 98:7 injecting 154:13 Inoue 140:4,4,11 141:12 149:19 150:15,24 152:17 159:7 229:15,16 229:18 input 145:7 169:7 inquiry 45:11 55:16 inquisitive 222:8 insincere 248:9 insist 154:18 217:18 insisting 154:15 190:22 instance 6:11 16:12 instances 7:12 44:21 Institute 67:14	institution 55:7 institutional 46:2 121:18 institutions 33:5 120:3 instructed 256:15 256:23 instruction 67:4 instructors 166:13 181:16 185:2 insulting 212:9,10 insults 51:5 89:5 integration 181:19 integrity 243:24 245:3,5 246:1 247:24 intellectual 123:18 124:10,11 189:6 198:10 239:5 intelligence 16:14 intend 238:15 intended 198:10 intending 92:20 93:13 intention 262:9 intentionally 197:3 interact 210:11 interactions 193:5 262:4 interchangeably 55:2 interest 223:22 268:11 interested 101:19 129:14 173:22 interesting 65:14 129:13 153:13,19 189:1,17 191:12 223:12,14 interestingly 162:21 interfere 6:23 interferes 49:3 52:10,12 59:10 interim 134:9,14,16 134:18,23	interject 204:6 internal 255:24 internships 96:21 interpret 190:7 interpretation 87:22 interpreted 88:20 115:4 interpreting 89:4 interrupt 8:7,10 26:5 81:6 107:14 224:21 258:8 267:17 interrupted 231:11 intervene 175:13 intervened 222:2 intervenes 224:6 intervening 13:4 intervention 212:4 215:12 218:5 222:4 223:3 interview 9:4 68:2 154:8 165:13 177:7 188:14 189:15 201:19 202:7 206:8 208:8 218:19 232:17 262:20 274:19 275:1 278:5 interviewed 278:18 interviews 9:4,5 275:10 intimating 173:24 intimidated 218:12 222:16 250:2 intimidating 173:24 introduce 25:20 37:1 42:18 46:11 128:11 130:2 239:6 240:19 243:9 265:14 introduced 13:21 13:23 14:8,9 108:24 113:11 114:16 137:7	210:21 211:5 239:12,23 240:7 267:20 275:13 277:2 introducing 137:9 240:21 introduction 135:9 163:7 169:14 introductions 118:7 131:12 163:14,17 intuitive 141:12 invades 91:21 investigate 57:14 57:22 61:14 73:3 136:17,21 156:14 186:13 247:18,19 investigated 61:7 100:23 101:5 112:24 113:13 180:3,6 206:19 investigating 60:21 73:19 247:14 investigation 82:11 154:8 155:10,21 162:11,13 165:10 171:4,12 177:3 180:8 187:23 202:5 238:16 252:10,11 259:1 262:16 263:2 274:12 277:8 investigations 72:1 73:1 invited 181:16 223:24 involve 206:13 210:19 involved 22:2,22,24 23:4 32:7 50:17 50:19 79:2 116:17 174:1 187:9,14 197:18 involvement 115:15 148:20 involving 97:13,24 162:14 163:13
---	---	---	---	---

issue 7:14 44:7 56:18 100:6 101:17 104:13 116:20 163:4 173:12 226:13 233:10 234:15 235:24 268:2 276:19	judge 211:22,23 227:15,23 judging 117:19 jump 52:3 190:24 Jumping 201:9 June 1:16	28:2,24 29:5,14 30:9 31:20,22 32:4,4 34:1,3 35:16,21 36:4,13 36:17 39:4,22 40:15 41:15,22 48:18 49:12 50:21 50:24 51:24,24 52:2 53:1,14 54:17,20 55:15 57:3 58:14 59:4 60:24 61:2 62:17 64:7,8,21 65:8,14 66:15,19,23 67:8 68:10,16 69:1 71:1,4,5 73:24 75:14 78:20,21 79:5 80:17 81:6 81:15 82:5,6,7,23 84:20 85:15,18 86:12 87:20 88:13 89:1,17 90:21,23 92:11 93:21 95:2 96:1,2 97:19 101:20 102:13 103:4,10,18,22,23 104:2,6,23 105:1 105:3 107:24 110:15,16 111:18 111:18 112:6,7,14 115:3,18 116:17 117:10,11,23 119:17 122:4 124:4,21 126:21 134:7 135:6,7 139:1,9 140:7,10 140:15 141:12 143:15,19,19 144:5,11 146:11 147:18,18 148:2 149:4,8,23 151:3 152:2,22 156:10 159:5 161:23 164:2,22 165:16 167:23 171:14 176:23 177:9,10	177:14,16 178:8 182:13 183:15 186:4,22,24 189:12 190:8,10 190:21,23 195:1 196:4,7,14 198:13 198:20 199:4 200:21 202:3 203:7,14,18 206:5 207:5 210:14 213:3,17 214:6,8 214:24 216:6,7 217:4 223:16 227:18 230:8 231:19 232:10 233:10,12,16,22 233:22 236:10,13 237:4 241:5,10,14 242:1,13,15,18 246:24 247:18 248:2,4 251:2,21 252:9 253:17 254:16 257:18 259:3 264:10,18 264:19 270:17 276:23 278:12 knowledge 73:22 84:10 92:8 95:15 97:21 124:11 129:21 137:18,21 150:3,7 218:18 242:15 243:21 244:12,14 known 19:4 Kramlich 121:20	language 49:18 51:5 171:5,9,15 172:3,4,8 173:17 173:24 174:16,22 174:23 175:1 182:19 189:20,23 190:5 191:16 194:7 large 38:16 39:2,13 larger 39:11,12 lasted 175:22 lasts 212:5 late 165:13 178:23 209:2 241:4 264:18 275:24 launched 278:19 law 5:2 16:10 136:1 237:15 247:8,10 lawfully 139:4 laws 15:13 186:14 228:19 236:2 lawsuit 9:12 227:17 234:24 235:17 lawyers 114:13 lead 81:11 159:20 166:8,11 185:17 185:24 leadership 135:18 135:22 leads 180:19 learn 36:6 90:5,7 148:5 155:10 225:11 learned 7:7 171:11 202:12,22 learning 67:14 84:8 84:12 85:8,9 148:8 149:17 leave 11:8 244:24 leaves 200:19 lecture 128:7 lectured 121:4 lecturing 143:10 led 82:13 234:23 235:16 Lee-Amuzie 28:15
issues 5:22 11:2,5,6 66:3 78:4,24 82:10 83:15 97:13 97:24 109:5 110:2 110:3 135:2 138:18 142:13 143:16 172:16 184:23 202:13 206:12,17 209:20 260:14,22 261:1 275:11 279:16,22	K Karina 121:8 keep 107:15 117:3 126:1 127:10,23 127:23 197:1 265:12 278:4 Keller 114:10 kept 196:16 Kevin 117:23,24 119:2 120:10 131:20 132:6,6,19 key 83:15 122:1 killed 139:4 killing 119:4 kind 22:14 25:2 35:1 52:16 53:7 64:11 66:22 77:3 103:7 126:18 170:21 171:5 174:8,8 175:16 190:12 198:6 199:2 206:22 228:3 233:12 276:18 kinds 35:4 72:5 77:21 78:8 knew 62:21 78:23 109:18 113:4,6 213:18 277:5 knock 138:21 know 6:6 9:20 12:7 13:8,10,11,12,16 13:18 14:2 17:24 18:9,21 19:3 20:14,17,22,24 21:15,22 22:4,6,6 22:8 23:14,15,15 23:20 24:4,6,6 25:12 27:16,21			
it'd 223:13 it'll 168:4 item 66:2 items 63:10				
J				
J 137:2 January 239:8 240:23 241:8,9 250:11 251:1 252:20,22,23 253:9,18,20 255:1 255:7 257:3 259:11,15 Jewish 237:2 Jews 50:2 Jim 114:10 job 10:9 12:5,17 16:20 21:13 57:13 57:21 83:1 100:24 101:2 136:17,21 137:17 263:9,10 263:21 264:7,11 264:12,14,14 jobs 93:6 join 181:16 Joseph 135:12				
L				
			labeled 85:2,3 191:24 265:24 269:20 labeling 140:12,14 labor 95:23 Lacey 120:18 133:12 137:19 lacked 248:17 lacks 119:24	

29:1 155:18 156:6 165:3 166:23 168:13 169:5,12 172:2 180:16 195:8 197:21 215:22 217:24 235:7,14 238:15 244:16 272:11 Lee-Amuzie's 212:13 left 243:17 legal 15:5,7 16:17 16:18 17:5 53:4 53:21,22 54:6,7 186:6 legalese 15:18 legally 139:1 lengthy 26:2 131:19 let's 5:7 22:3 25:2 41:13 46:12 62:8 76:7,9 80:12 83:9 110:12 134:3 137:5 142:9 148:3 148:5 161:8 172:18 178:3 185:24 195:3 201:7 219:20 222:1 229:10 234:3 264:22 letter 117:14 242:17,20 250:19 250:21 251:2,5,17 251:23 252:3,5,8 253:18 254:4,6 258:5 259:1 letters 49:1 letting 112:14 level 16:14 19:3 21:4,5,5,6,7 53:21 53:22 54:5 60:22 159:3 levels 50:22 licensed 186:24 licenses 104:16 lie 177:6 230:2 232:6	Likewise 6:17 Lila 28:19 29:5 103:11,12,24 107:18 121:9 126:3 140:8,8 154:15 156:2,5,5 156:6 164:24 165:3 172:19 175:15 176:2 177:14 180:22 181:3 189:10 190:22 191:2,2 192:16,16 193:20 194:14,16 196:16 196:19,24 197:4 198:3,12,16 199:2 201:11 202:7,14 203:2 207:20 212:13 214:6,8,18 214:19 260:11,14 262:4,11 263:14 265:7,8 279:16 280:2,3 Lila's 103:11 Lili 28:18 Liliana 62:14,18 64:2,9 65:22 67:21 68:4 69:4,6 70:5 83:24 88:8 89:19 90:9 93:7 95:5,24 97:11,17 98:23 100:16 101:23 102:2 107:13 110:5,22 111:4,9,13,20 116:11,16,17 118:15,18 119:2 119:20 120:7 126:4,6,17 130:9 131:9 132:18 133:6 141:5 149:23 151:24 152:16,18 155:3 155:18 159:15 160:13 165:23 166:23 169:5,13	172:1 176:3,20 178:21 198:21 199:4 204:13 207:11 215:22 217:24 219:15 230:13 232:18,20 236:18 238:14,24 244:16 247:12 249:10,19 260:11 262:7,17 263:3 266:6,17 268:23 269:6,12 271:4 272:10 274:18 275:1,7,8,16 276:16,22 277:13 277:15 278:17 279:14 Liliana's 167:12 266:23 limited 49:16 116:2 line 46:1 52:5 84:2 93:18 99:3 118:18 119:22 120:2,16 120:17,20,21 121:15 123:19 126:5 127:16 129:17 137:5 172:16 173:12 230:14 254:17 lines 196:5,5 link 199:3 links 129:5 Lion 244:21 Lisa 241:17,18 253:14,14 254:3 Lisa's 241:16 list 14:20 15:23 16:8 63:10,10,17 83:15 137:9 277:3 listed 28:13,23 243:23 244:2 246:5 listen 216:13 217:17 218:4 221:4 223:24 234:3	listened 216:1 238:23 240:12 245:24 246:14 lists 33:7 listserv 113:9 115:23 137:9 little 27:17 81:7 113:22 120:14 167:19 183:10,13 209:14 218:23 244:21 live 246:3 lives 116:24 126:11 131:11 185:3 LLP 2:9 location 40:10 41:20 50:16 lodged 237:21 279:15 logical 35:12 long 8:22 14:20 15:23 25:17 47:20 60:19 63:17 157:10 216:17 228:23 235:21 255:10 264:7 Lonnie 186:1,2,17 187:3,7 look 37:14 44:4 45:2 47:8 60:24 66:8,14 82:5,17 82:20 92:16 107:10 110:12 113:7 117:13 120:15 131:24 132:1 133:11 166:19 167:9 178:3 182:24 183:2,2,19 192:14 243:13 245:6 274:17,20 looked 19:4 82:7,9 115:7 133:16 266:9 268:20 looking 40:22 48:16 148:19 199:10	245:11 266:3 268:18 274:9 276:9 looks 114:19,20 118:2 120:9 182:22 266:5 270:16 loosely 76:9 111:15 lose 263:10,20 264:7,14 lost 183:14 lot 21:22 24:8 32:4 63:10 67:12 72:22 78:1,4,14 103:24 137:16 174:13 177:17 178:5 247:12 255:18 lots 6:17 13:12 77:21 78:1 loud 211:14 louder 8:3 low 213:2 lower 39:1 64:18 65:24 67:4 243:17 luck 46:10 lying 97:18 238:15 238:18,19
M				
Madame 26:9 47:24 main 12:12 30:6 major 22:4 78:7 majority 33:6,19 making 64:10 77:8 78:18 117:8 171:15 173:15,22 194:7 236:2 262:13,13 male 93:20,23 94:3 94:9,14 95:2,8 101:14 102:11,18 131:4 197:2,2 223:11 man 139:10 263:19 264:6				

management 22:14	markers 76:10	139:8 142:23	151:2 152:20,22	278:10,21 279:8
manner 50:6 55:22	Market 2:11	143:19 146:19	153:4,18 154:13	279:12
154:10 155:1,11	marking 179:2	151:1,15 154:16	154:17 155:12	meeting's 146:6
170:11 171:1,2,3	267:24	175:21 182:23	156:12 160:13,15	meetings 68:18,23
175:17 177:24	Marranzini 241:18	184:6 190:2	160:18,22 163:19	139:21 144:13
248:3	241:20 254:3	192:13 193:14,16	163:24 164:3,20	145:16 148:3,9,12
Marazini 241:19	married 11:13	199:18 203:16,16	164:21,22 165:1,5	151:8,23 152:16
March 62:13,15	91:16	204:6,19 208:18	165:7,11,17,18	153:10,10 158:15
64:2 68:13,14,17	mask 87:7 276:19	211:3 214:3	166:16 167:2	183:19 201:2
80:10 83:16,20	masquerade 117:7	217:22 218:15	168:12,14,17	233:7 255:23
98:22 100:16	massive 81:10	221:15 223:5,13	169:4,18 171:8	256:7,16,18
107:13,15,16	match 36:14,19	230:7 233:18	174:4,9 175:22,23	271:18,20
108:1,7,10,13,14	238:11	238:8,19 243:19	176:1,24 177:2,11	member 28:18,22
108:16 178:23	material 144:21	247:9,9 256:12	177:15 181:12,24	28:23 29:2 50:24
179:5,13,23 180:9	179:4,11 185:11	258:8 264:3 269:8	182:8,18 183:23	56:12 63:11 64:3
206:17 276:3	189:3	270:12 275:23	188:7,8,9,9,24	64:19 67:21 86:24
Marcus 75:18,20	Matt 154:11 166:6	278:12	189:16 191:8,12	87:18 90:9 93:12
margin 172:24	192:8,14,14 194:5	meaning 7:19 24:15	191:15,18 197:5	93:23 95:2 96:7,8
Marie 117:17	194:6,12,13 221:8	45:10 74:9 92:18	198:6,9,11,16	96:15,19 99:14
mark 26:5,13 87:3	matter 64:24 75:6	97:11 111:9	199:22,24 200:24	109:13,16 111:1
98:12 107:2	116:24 126:11	152:11 169:12	203:4 206:2,7,13	112:3 113:1
113:15 118:10	131:11 154:1,8	208:1 260:11	207:3,6,11 208:5	114:17 123:23
133:22 157:5,23	matters 29:22	means 11:2 31:6	208:9,11 209:15	136:12 153:18
159:18 162:1	72:23 77:17	88:16 93:13	211:19 212:19	156:23 176:4
166:7 182:5	Matthew 2:10	143:20 181:11	213:5,9,19 215:17	230:6 232:7 276:3
185:16 250:7	239:23	221:4	216:11,17,22	member's 73:2
251:22 254:13	mean 9:10 11:1,6	meant 31:13 54:24	217:1,4,11,22	members 28:12
265:10,22 267:6	13:16 14:20 15:11	54:24 114:23	220:20 221:20	87:1 111:16 123:6
268:5	16:4 19:6 20:18	115:1	223:4,21 224:7,10	127:4 133:9
marked 25:22 26:9	22:12 25:8,9	media 50:1	224:10 231:19,19	153:12 230:3
26:9,16 27:7	27:21 31:8,9 35:8	mediate 82:10	231:23 232:1	members' 72:18
37:12 42:20 43:14	35:12 40:9 41:19	mediated 82:23	233:23 234:5	memory 7:5 14:2
46:13 83:11 98:14	41:21 46:3 47:8	mediation 12:9	235:15 239:20	15:2 47:10 66:7
98:15 107:4	51:1,4,20 52:10	medications 7:2	240:9 244:15	86:12 160:12
113:18 128:13	59:2 60:23 63:16	meet 68:6 78:21	246:1,18 249:6,11	253:21 280:12
130:4 134:1 157:8	64:20 65:14 66:16	79:20 162:19	249:12,13,14	men 66:1 196:15
158:1 159:21	66:18 73:4 80:21	164:6 202:19	252:20 253:24	197:13
162:4 166:9 182:9	81:16 82:1 85:1	271:16	254:6 256:5,10	Mengel 1:18
185:20 210:20	91:12 97:19 99:19	meeting 91:4 96:16	260:8,10 261:7	mental 138:13
211:4 240:3,13,22	100:10,19,20	96:18 98:23 99:1	262:20,21 266:15	mention 73:21
241:6,8 243:7	104:4,11 105:23	102:10 103:22	269:13 270:4	181:9 209:17
250:8 252:1	107:14 110:6	109:18 110:6,23	271:1,6,10,14,23	mentioned 14:12
254:11 260:2	117:2 119:18	141:1 142:5,6,12	272:1,1,4,6,8,12	15:9,23 39:16
265:20 267:9,15	122:4 124:1,4	143:2 144:9,23	272:15,16,20,22	50:9 65:2 79:14
268:1 269:22	125:24 127:21	145:13,20 146:3,4	272:24 273:3,4	92:19 264:12
274:20	128:18 134:10	146:17 147:3,14	275:19,20 277:7	mentioning 179:15

179:18,18 mentions 181:3 merit 82:4,18,21,22 83:7 104:23 meritorious 80:16 message 129:3 144:16 148:4,5,6 148:17,18 149:15 messages 117:5,6,7 117:11 128:1,2 met 10:3 25:18 104:1 164:9 165:16,22 231:15 265:7 269:6,9 270:8,14,19 methods 6:3 Michael 2:4 5:5 135:12 137:2 Michelle 121:20 micro 58:3,22 microaggression 57:3,4,11,18 58:4 58:10,11,14,19 59:2,19 60:17,23 61:2,4,17 62:4,6 84:24 85:1,3,21 87:9 90:16 91:1 92:5,18,21 93:8 93:14 94:13,16 95:16 96:24 106:2 106:6,7 112:11 126:12 133:4 151:18 microaggressions 57:1,15,22,23,24 58:2 59:15 60:22 61:7,15,20 62:2 84:3,11 86:4,5 109:6 110:22 111:5,8,15,17 179:5,13,24 260:17 262:5 middle 43:4 49:10 120:20 133:20 137:14 243:1 mind 80:19 120:6	164:18 165:17 191:3,4 199:14 217:18 239:1 269:10 mine 172:23 173:2 minimum 24:4 minor 78:8 minorities 33:3 64:18 65:24 minority 35:15 150:8 minors 96:20 minute 5:7 127:15 182:17 222:18 minutes 174:4 175:22,22,23,24 200:16 201:1 209:8 211:17 212:6 214:15 215:8 216:3,4 217:23 219:2 220:17,21 221:20 224:2 234:21 236:19 mirror 179:9 misbehavior 53:6,8 mischaracterize 196:13 mischaracterizing 258:18 misinformation 96:19 97:6 misleading 197:3 misquoted 173:5 misreading 212:16 misrepresenting 211:23 259:12 missing 223:16 227:9,9,10 mission 30:20,20 misspelled 69:18 mistake 274:16 mistaken 113:21 201:8 mistakes 212:1 misunderstand	19:15 mix 46:24 mocked 174:5 176:2 moment 111:10 136:24 194:11 201:17 249:17 267:5,12 monitor 24:5 month 144:1,1,9,10 144:11,11,12,13 158:18 159:17 162:9 165:24 277:9 month's 158:18,20 months 17:21 19:23 179:9 morning 5:12 58:21 136:4 mouth 77:6 183:15 183:16 move 81:7 96:3 124:22 259:9 moved 11:11 moving 225:13,23 multicultural 150:8 multilingual 181:19 multiple 182:2 municipality 41:21 41:23 murder 120:4 138:8,24 murdered 119:10 138:9 murdering 138:3 139:10 mutual 127:5 mystery 149:16 myth 166:12 168:18 <hr/> N <hr/> N 3:1 name 5:5 14:22 17:18,24 20:11 26:18,20 28:20	43:13 69:12,14 83:19 86:20 106:16 113:1 116:19,23 120:10 121:11 126:8,13 126:18 129:6 132:19 133:1,8 140:5,6 141:12,13 241:19 254:17 268:4 named 121:19 names 21:12 95:11 95:13 126:23 173:21 268:4 naming 101:19 nation 227:16 national 161:21 236:16,23 237:5 native 19:18 39:18 39:18,19 50:9 240:3 natural 147:21 nature 5:19 6:22 10:9 37:9 48:2 50:15 51:1 53:12 54:14 63:9 86:21 115:15 144:21 155:15 157:18 167:3 171:16 194:8 244:24 249:12 navigate 211:16 navigating 214:16 Naydan 28:19 29:5 62:14,19 64:2,9 65:22 68:4,6 70:5 83:24 84:2,11 88:8 89:19 90:9 92:4,17 93:7 95:5 95:24 96:5 97:11 97:17 98:24 100:16 101:23 102:2 107:13 109:7 111:4,9,20 116:11,16 118:15 119:2,20 120:7	124:23 126:4,6,17 127:11 130:9 131:10 132:18 133:6 136:12 141:5 145:3 149:23 151:24 152:16,18 155:3 155:18 156:6 159:15 160:13,23 161:5 165:3,14,23 166:23 169:5,13 172:1 176:3,20 178:21 180:2,22 181:3 198:21 199:2,4 201:11 202:8 207:11 212:13 215:23 217:24 219:16 220:2 230:13 232:18 236:18 238:14,24 244:16 249:19 260:12 262:7,11,18 263:3 265:7 266:17 268:15,23 269:6 271:4 272:10 275:1,7,8,16 276:16,22 277:13 277:15 278:17 279:14,16,23 Naydan's 67:21 69:4,6 106:5 110:22 118:18 172:19 204:13 247:12 249:10 274:18 Nazi 237:5 Nazis 237:4,7 necessarily 35:3 147:17 194:19 necessary 10:7 72:4 251:16 need 8:7,10 21:17 26:1 28:7 34:17 35:13,13 40:2 47:19,19 72:6
---	---	---	---	---

79:6 80:22,22,23 81:4 82:17 85:15 85:17 103:13 105:11 114:21 117:3 126:1 127:10,22,23 148:5,7,8,8,19 149:7,7,8,8,10,13 149:16 150:9 161:3 182:13 209:3 228:21 229:23 232:16 234:10 247:18,19 247:20 269:18 needed 44:4 115:9 115:12 142:4 202:19 229:13 258:10 259:18 needing 137:12,15 needs 21:16 30:23 71:8 negatives 249:4 neither 211:22 neutral 50:6 117:7 never 36:23 37:8 45:15 51:17,17 81:2 89:22,22,23 90:2,3,3 96:7 100:23,23 101:5 106:16 111:22,23 112:20,20,22,24 113:1 134:6 137:2 137:4 138:5 148:23 183:18 189:6,14 209:20 263:9 nevertheless 95:20 new 14:4,8 24:10 80:13 113:10 114:16 131:18 214:13 253:9 news 238:2 Nigeria 227:16 nine 125:4,5,7 Nittany 244:21 nodding 6:13	non-discrimination 42:10 non-legal 52:19,22 52:23 nonsense 78:8 normal 6:18 7:9 70:13 92:9 141:19 223:5,5,6 Notary 1:18 note 195:22 267:14 269:24 270:1 277:20 279:11 notes 4:4 8:23 9:4,7 9:8,9 47:13 70:2,4 70:9,10 98:13,17 98:21 102:1 107:3 107:8 108:12,14 108:17 109:24 110:2 157:24 158:4 159:1,12 187:22 188:4,4,6 188:12,13,23,23 189:14 191:11 192:8,10 194:6,6 195:19 196:13 197:9,14,16 201:8 201:10,19,19 202:7,10 206:12 207:19 220:2 235:8 254:9 256:17 260:5,7,10 262:2,24 269:9 274:9,11,19,23,23 275:21 278:4,9,16 278:21,21 280:15 notice 3:13 26:6 191:13 267:2 noticed 191:19 NT 31:18 Nuh-uh 180:10 241:16 number 27:13 35:9 43:3,8,14,15,15 43:24 45:2,5 46:19,21 81:22 83:14 86:10,10,23	90:24 92:16 93:17 93:19 113:16 125:4,5 133:23 157:6 159:19 160:7 162:2 166:8 168:7 169:9,9 180:18 182:7 185:17 195:23 196:2 199:12 205:5,6,21 211:7 239:24 267:13 numbered 45:3 numbers 27:17,18 27:19,21 40:11,16 40:22 166:18 182:12 numerous 144:2 <hr/> O <hr/> oaths 7:19 object 7:8 11:24 15:15 89:10 256:23 258:13 objectable 87:21 objected 15:15 257:17,20 objecting 257:8 objection 7:16 15:14 17:10 20:20 24:17 25:5 31:14 32:10 33:17 35:6 36:9 38:20 39:3 39:24 44:18 46:6 52:21 53:9,23 54:11 56:1,6,13 56:21 58:24 59:16 59:21 60:11 80:4 82:15 84:14 87:15 88:2,23 89:16,21 90:18 93:10 94:5 94:10,17 95:17 97:2 98:2 101:1,9 104:18 105:9,19 112:12 125:12 126:20 127:14 128:9 129:16	131:1 132:13 136:14,19 145:5 145:14,23 146:7 146:18 147:4,16 147:24 150:2,17 151:19 152:10,19 154:20 157:1 169:23 170:5,18 170:22 176:12 177:8,22 192:1 193:13 204:22 207:18,22 210:16 227:19 228:7,13 231:17 232:8,19 235:1,4 236:20 237:11 238:7,17 247:16 248:19 249:24 257:13 258:15,23 259:17 263:22 264:8 278:6 280:20 objections 15:19 objects 7:13 obligated 7:22 55:16 obligation 7:10 24:5 observe 6:11 observing 174:5 obvious 203:17 obviously 8:8 70:10 119:18 139:2 211:12 occurred 168:8 180:19 205:22 occurs 50:16 october 159:19 160:8 162:3,8,20 163:20 164:12,17 164:22 165:13,24 166:3 168:6,12 178:21 179:8 180:5,16 182:8 188:9,13,18 191:8 206:13 207:9 208:3,5 209:16	223:3 239:20 245:24 256:10 265:24 266:5 268:20 270:1,5,8 272:12,17,23 275:2,3,8 277:7 277:22 278:9,17 279:13,16 OEOA 20:7,8 22:21 29:19 39:21 offended 8:12 89:20 147:15 offending 49:23 offensive 51:5,5,8 51:10,16,17,18 52:11,17 53:16 57:4,5,6,6,10 58:11,16 60:1 172:4 195:2 offers 163:23 office 12:6,12 13:9 17:18,23 18:3,12 18:16,20 19:3,22 20:1,1,6,16 22:1,2 22:20 29:20 32:8 32:17 33:11 35:1 35:4 39:7,20,21 39:21 40:4,7,13 40:18 41:3 42:2 43:20,22 44:13,16 44:23,24 46:5 57:14,22 60:21 61:6 62:6 67:18 68:24 70:22,22 71:2,2,20,24 72:18 74:5,6,8,12 74:13,14,15,17,18 74:23 75:2,7,11 75:12,16,23 77:4 77:9,10,24 79:7 79:12,13,15,16,18 80:12,12,13 83:5 86:8 87:10 102:24 103:1 104:1 109:19 111:21 112:18 113:8,13
--	--	---	---	--

114:20 123:2,5,6 134:14,20 135:4 136:17,21,24 139:17 143:6,12 157:20 167:17,18 186:2 190:7 209:20 210:10 212:12 223:8 230:21 231:16 232:15 247:4,5 256:1 264:1 266:12,12 officer 61:5 114:20 115:6 118:23 120:18 123:5 124:18 128:24 133:12 137:8,12 137:19 138:3,9,22 139:10 143:5 163:4,7,13,17 190:6 212:12 223:8 263:24 officers 113:10 118:22 128:2 129:24 131:12 officers' 118:7 135:9 offices 78:16 79:14 79:19,22 210:11 230:21 officially 20:24 oh 16:6,18 26:8 28:20 32:14 42:10 43:3 46:22,22,22 48:15 69:24 72:22 73:4 92:1 97:3 99:7 101:15 109:1 113:23 119:8,14 120:22 129:4 134:15,20 181:5,5 183:11 184:18 198:23 199:1 201:21 204:8,21 205:11 207:13,21 232:23 241:16 251:5,7 253:6	254:19 258:22 274:22,24 276:11 280:2 okay 7:7,19 10:5 14:7 27:5,23 28:9 28:11 29:1 31:11 31:17 35:13 37:14 37:23 41:6 43:16 44:15 47:9 48:2 48:21 52:15 55:5 55:8 60:19 65:11 66:6 67:20 68:17 73:5,7 76:4 86:10 97:6,22 98:21 99:23 101:15 102:13 103:3 105:15 106:18 108:1,7,17 109:2 109:4,4 113:3 115:20,23 116:8 117:5 119:8 125:4 125:7,19,21 126:6 126:10 127:23,24 128:4,7 129:1 132:3,8 134:15,15 135:21 146:5,9 147:2 155:21 160:21 164:7 168:3 169:19 175:18 176:4,8 177:12 179:3,3 184:11,18 188:12 190:8 196:8 197:7 197:8 199:1 200:10,12 201:21 202:1,11 205:8,14 206:7 211:11 213:13 215:9 216:14,19 219:18 221:10 229:9 232:6 233:14 234:3 240:18 242:21 243:11 245:21 249:2 251:7,8 253:6,8,8 253:12,16 254:24	256:22,24 258:6 259:8,22 263:5 264:6,17 265:1 274:22 275:15,18 278:1 280:14 older 104:4,5 204:11 once 18:20 40:17 82:7,9,20 92:19 113:21 158:18 185:2 205:3 ones 8:24 15:2 71:2 76:4,5 163:3 225:22 243:21,22 255:22 262:21 ongoing 34:17 181:20 216:7 234:23 online 21:22,23 48:16 70:21 124:18 157:21 onlines 13:10 open 118:17 135:23 152:3 163:7 183:7 238:16 openly 58:15 203:3 operate 20:19 operates 185:3,4 opinions 45:12 91:13 152:24 opportunities 30:22 49:5 opportunity 17:23 20:3,4,6 48:3 143:21 166:19 173:20 211:21 oppose 151:14 opposed 53:4 150:23 opposing 108:5 150:20 opposite 153:22 oppress 120:3 oppressed 121:23 oppressor 121:22 option 148:13	options 76:2 order 19:11 83:16 134:4 172:18 240:11 250:23 265:13 267:15 organize 208:4 organized 151:24 152:16 181:17 198:4 organizer 192:21 organizers 194:19 215:17 organizing 165:12 oriented 12:18 origin 38:3 original 92:10 179:13 276:2 originally 10:12 outbreak 14:3 outcome 251:3 outdated 18:1 outlined 111:1 Outlook 114:11 outreach 18:13 outside 187:19 outward 117:20 overall 242:3 oversee 93:22 overt 58:21 88:18 overweight 137:15 Owens 120:14	125:13,16,17,18 125:19 130:6 131:9,18 135:19 135:19 157:6 158:13 166:12,18 167:9 168:22 178:4,21,24 180:12,18 191:5 195:9,22 199:8,9 199:10,12,15 205:6,17 243:1,10 243:16 244:20 245:6,10,13,15 250:23 251:6 252:18 255:3,11 266:4 267:11 269:20 pages 63:18,21 66:3 183:6 201:10,23 244:24 paper 22:5 144:17 170:7 191:21 192:4 papers 166:22 paragraph 28:13 34:8 96:4,6 97:9 109:22 117:21 121:22 135:17,20 178:20 242:24 255:10 279:6 paragraphs 45:3 parenthesis 31:17 32:24 83:16,17 park 30:8,9 138:7 part 7:9 36:23 57:13 68:23 97:12 101:8 110:10 128:16,21,22 129:24 141:19 144:23,24 171:4 180:8 181:19,24 197:5,6,10 224:24 228:19 231:6 238:3 239:2 245:7 277:7 partial 239:21
--	--	--	---	--

Participants 196:18	44:20 45:17 53:2	142:21,22,23	125:23 127:20	183:3 198:19
participate 48:3	54:22 55:3 56:20	143:7,11 145:16	128:23 134:12	piece 266:10
145:17 242:10	61:6 67:2,8,11,13	146:5 152:3 154:9	140:20 145:21	pieces 198:17
253:24 254:7	72:19 76:13 79:13	154:14,17 165:11	147:6,7 186:2	223:15
participated 251:18	85:13 86:16 87:10	170:17 171:22	191:22,22 192:3	Piero 1:4 5:6,13
participating 120:8	87:13,24 88:19	174:2 188:7	196:21 206:23	10:22 43:3,6,7
136:12	91:7 93:5 94:13	190:16,16,17	230:7 270:19	90:6,22 92:18,24
participation 145:7	95:1,10 98:1,5	191:14,24 192:4	273:9	95:23 105:17
particular 34:3	99:12 105:14	200:21 208:13	personal 120:18	109:21 114:4
50:14 53:12 55:11	113:11 115:24	226:21,22,23,24	218:18	130:9,19 139:17
81:1 147:9 172:16	116:2,6,9 118:2	228:4 231:1 232:4	personally 142:16	141:6,16 143:17
173:12 225:6	120:19 122:4,19	234:18 235:23	147:15	144:8 145:4
particularly 156:23	122:22 136:13	236:1,6,11,11	personnel 72:23	148:11 149:18
parties 73:15,17,20	138:2 139:10	238:4 247:19,19	73:9	150:14 151:7,22
78:24 100:12	141:22 143:11	262:20 264:7	perspective 143:21	155:22 158:11
party 79:2	146:9,13 156:18	people's 88:1 92:10	149:2 233:9	162:14 165:4
pass 263:6	161:21 169:17	104:16	perspectives 34:12	166:24 168:11
passage 173:13,17	176:4,21 180:24	perceived 100:11	34:18,19	173:6,14 182:22
276:17	186:6 191:20	percent 33:2,3,7,7	pertain 71:2	184:2 187:15
passed 68:19	192:5,18 193:8,10	33:15,19 35:14	pertained 84:16	204:14 206:2
186:22 263:16	210:13 225:4	38:8,12 39:1	pervasive 49:2 52:9	207:12 210:21
path 270:21	226:8,18 227:12	percentage 35:10	59:9 60:6,8,9,12	211:5,19 212:17
patience 5:12	227:24 228:11	35:11,17,23 36:7	60:13,13,17,18	222:2 223:2 228:3
211:15	230:1 243:3,5,10	36:18,19 38:7,11	61:8,15 62:2	230:12 239:22
pattern 54:14 57:16	245:15,18 247:5,6	39:1,7,11,13 40:6	Ph.D 159:9,13	240:8 251:3 252:5
57:24 58:17,18	264:1 271:18	perception 100:18	Philadelphia 2:12	252:20 255:4
59:5 61:16 89:1,2	273:8,18,21	232:9,11	PHR 186:9	260:21 261:2,8
89:4,5,8 144:1	Pennsylvania 1:2,7	perfect 152:13	phrase 10:17,18,19	262:17 263:2
pay 130:15 258:9	2:12 9:13 80:2	278:14	36:4 260:17	270:9 271:1,5,9
paying 80:3 228:11	186:10,14 187:1	perfectly 31:23	phrased 142:22	271:14,23 272:1,4
pedagogy 180:24	202:14 210:2	Perfecto 10:20	154:1,3	272:5,9,10,11,16
203:5	people 13:7,8 19:1	performance 5:22	PHRC 186:3,21	272:20,22 273:1,4
pen 179:2	23:18 24:8 25:12	period 28:5 76:7	187:20 255:22	273:15 278:19
pending 264:15	25:12,12 49:22	77:24 78:12 137:7	physical 48:24	279:15
Penn 4:12 5:24	50:2,10 59:3	permissible 170:10	49:16 52:6,14	Piero's 9:6,8,10
9:11,14 10:9	70:17,20 78:1,2	permission 72:21	53:16	110:18 257:21
11:10,11,13,17,24	78:15,23 80:6	73:3 90:4 209:19	physically 190:17	258:13 269:6
12:5 13:14 15:24	91:12 95:11	persistent 60:5,6	pick 140:8	276:8,16 277:8
16:8 17:2,12 18:4	104:11,11,12,15	person 32:2 49:6	picked 211:14	place 27:17 70:24
18:7 19:9 20:18	104:20 111:14	50:24 59:24 60:1	picking 229:20	142:6 231:15
21:4 28:3 29:6,13	112:14 119:5	63:7 66:3,21	picks 131:8	plagued 214:16
29:20,24 30:1,3,6	122:22 126:22	68:18,23 70:17	picture 79:4 133:13	plaintiff 1:5 2:7
30:6,10,13,19	129:9,10,15	71:6 78:19 101:20	183:9 198:23	240:5
31:17 35:2,5 36:5	132:22,22 136:10	105:13,20,23	199:13 227:11	plan 39:10 40:2,11
36:17 38:12 39:8	137:20,24 140:15	112:14 117:1,16	228:15	40:13,15,17,19,20
40:8 42:7,9 43:5	140:19 142:19,20	124:12,21 125:9	pictures 182:22	40:21 135:3

planned 168:14	119:20 121:4	position 11:10	present 170:2	147:1,2,13,19
planning 135:1,4	123:10,17 124:17	17:12,15 18:14	presentation	158:16 161:20
254:5	128:2 129:24	21:17 25:19 29:6	139:21,22 140:7	170:12 191:21,24
play 101:20 211:10	135:9 137:7,11,18	29:13,18 75:10	140:11,13 143:7	192:4 226:11,13
215:8 217:12,18	138:3,9,20,22	99:12 105:2 123:2	169:2 249:16	227:5,7 228:4,22
218:4 219:24	139:9 163:4,7,13	145:9 169:17	266:13	234:18 237:19
played 216:17	163:17	187:2 208:23	presented 27:23	256:9 264:7
playing 215:2 240:9	policies 18:6 20:11	positions 29:9 51:2	34:9 140:23	problems 206:23
plays 212:2 213:14	30:13 35:1,5,8	80:7 122:21	225:10	275:23
215:4,10 218:6	42:7,8,8,11,15	possible 18:14,15	presenting 223:15	procedures 18:8
219:4,22 220:5,23	44:13,16,23 45:17	130:22 177:5	president 17:16	proceed 227:17
221:5,22 222:20	46:4 87:10 105:14	post 183:23 200:18	president's 21:6	process 12:18 17:3
224:4 234:7	146:13	posting 184:7	presumably 118:14	18:8 21:3 22:19
pleasant 37:22	policy 13:20 14:8	198:21	123:20	22:23 44:11 77:7
please 14:22 32:22	18:4 29:24 43:8	posts 136:3 199:4	pretty 70:23 152:22	80:11 258:24
59:19 62:8 70:8	43:17,18,19,21	potentially 84:7	156:11,13	processes 12:19
70:14 83:9 139:13	44:2,4,8,12,17,21	87:13 109:7 228:5	previous 7:8 14:12	13:3 79:7
192:10 225:21	45:2,3 47:2,22,22	power 119:23	268:15	processing 79:20
236:22 268:16	48:12 49:13,15	121:18 122:6,6,11	previously 202:13	produce 178:12
276:17	50:10 52:17,19	130:12,16,16	267:19	produced 27:20
plenty 61:23 81:8	53:7,20 54:7,9,17	131:4 132:15,16	printed 26:3 45:5	47:14 224:1
PLLC 2:3	54:19 55:8,12,15	132:22 236:2,8,9	printouts 243:10	production 166:18
plus 11:12 93:2	56:24 57:1,1	236:11,14 237:12	prior 267:22	productive 196:19
121:18	58:18 59:8,13	237:13,13,16	private 71:19,19,19	197:1 198:9
Plymouth 41:12	93:5 95:10 210:7	256:14 257:1	71:22 73:14	professional 42:23
point 41:7 62:11	210:9 224:17	powers 122:21	271:18 272:1	44:17,22 55:15,19
65:16 75:2 76:1	225:3 226:8,19	practice 70:13,13	privately 271:21	55:23 56:5,11
93:18 94:8 95:7	230:1,22 233:24	186:24 273:9,20	272:24	66:13,15 85:12
127:7 169:8 174:6	247:21	practices 173:11	privilege 91:22	93:5 172:15
174:20 175:21	political 117:6	185:1	122:2,5,6,11,19	173:20 177:19
176:10,13 182:18	128:3	practicing 186:4,5	122:20,24 123:2,4	218:2 222:10
188:22 189:11	pool 18:10,14,15,19	precariously	123:7,10,17,18	232:2
190:21 191:1	18:21,24 19:4,5	121:13,17	124:1,10,10,11	professionalism
199:11 203:8	20:15,22 21:1	preference 12:8	155:14 158:21	42:8
208:4 211:21	23:7 25:15,15	prejudice 121:18	166:14 185:4	professionals 148:7
214:12 217:3	42:4,4	premarked 83:13	probably 7:7 57:24	148:17
247:2 251:12	pools 40:24 41:4	preoccupation	60:17 63:16 67:5	professor 11:11,14
256:18 258:11	population 33:2	110:22 111:4	85:19 101:15	84:2,11 92:4,17
265:18 268:16	36:3 38:1,8,11,15	preparation 9:15	143:13 165:7	95:4 96:5 100:3
276:14 277:13	39:2,13 40:8	9:21 63:24	199:3 200:17	106:5 115:16,17
pointing 94:3 179:1	41:10,15,22 42:5	prepare 8:20	274:15	115:18 118:2
points 179:12,22	150:10	103:14	problem 12:13 67:6	124:22 127:11
274:4	portions 268:1	prepared 257:11	97:12 119:3,21,23	136:11 143:19
police 113:10,11	posed 8:9 155:24	preparing 10:2	140:15,19,21	144:8 145:3,11,20
115:6 117:6,8,11	190:23 193:11	258:20	142:14,20 143:7	145:21,22 146:1
118:21,23 119:4	194:12,14	preposterous 227:6	143:11,15 144:4	146:24 147:1

148:11 151:22 160:23 161:5 165:13 177:20 180:2 195:12 220:2,8 222:12,15 279:23 professors 45:10 67:4 85:13 141:6 155:14 176:20 177:5 203:11 223:11 program 22:14 29:7 48:4 85:24 98:1,10 99:19 130:10,19 139:21 139:24 140:1,2,7 141:3,4 149:12 150:1,21 153:14 153:15 158:15,15 158:18,20 168:12 177:6 180:24 181:15,18,24 182:8 192:20 194:20 195:12,17 198:4 203:5 206:2 223:3 224:7 225:14 230:2 231:4,5,16 232:3 245:24 255:21 256:10 266:13,19 programming 144:3 programs 34:18 49:4 59:11 130:17 144:5 181:21 182:2 prohibited 50:13 50:20 53:11 project 36:22 37:9 67:15 226:12 231:3 249:16 prominent 136:12 promise 259:24 promote 35:4 promoting 35:2 39:22	promulgated 40:18 42:9 promulgating 230:22 pronounce 26:18 26:19 pronounced 241:19 proper 152:5,8,15 152:15,18 154:4 230:10 PROSECUTING 204:23 protect 174:2 protected 136:1 protection 14:21 16:11 protective 267:15 protects 86:16 prove 202:21 203:13,23 proven 16:23 83:4 104:13 provide 23:9 30:21 35:16 72:7,8,11 73:16,17 113:1 153:16 216:5,12 217:16 254:5 271:13 272:19 provided 8:24 9:1 17:6 53:2 70:6 96:19 97:7 152:18 185:11 provides 169:13 providing 78:1 273:14 provost 44:6 PSU 3:16,17,18,19 3:20,23 4:3,5,7,9 4:11,15,16,17,18 4:19 43:6,14 46:19 48:9 83:14 96:4 98:15 107:5 130:6 131:9 157:6 159:19 160:7 166:8 167:9 185:17 195:23	196:2 205:6 208:2 239:7 240:22 250:23,24 251:1 254:14 255:24 260:1 265:24 267:13 269:20 274:20 278:2 PSU's 224:16 PSU-De 43:3,6,7 psychiatrist 138:17 public 1:18 37:1,18 published 21:18,20 37:18 Puerto 10:12 11:8 11:11 122:12,17 147:13 pull 72:18 182:16 235:12 pulled 160:5 235:9 purpose 6:8 51:23 134:19 148:2,3,9 163:24 216:16 224:9,18 239:19 249:13,14 252:8 purposefully 58:15 purposes 23:12 212:24 push 270:11 279:17 280:7 pushing 260:22 261:1 put 26:12 27:6 37:4 37:6,15 46:12 64:19 76:9 77:6 81:5 95:23 101:23 124:18 130:2 137:1,8 151:2 202:2 203:6 207:23 219:1 229:19 233:12 237:3 239:4 267:5 269:18 278:22 puts 111:8 220:7 262:4 putting 59:24 112:19 198:2,3	Q Quaker 2:6 qualifications 10:9 25:18 115:7 qualified 24:7 33:15 104:10,12 qualify 238:24 quality 67:3 question 6:14 7:16 8:9,13,16,16 11:22,23 12:20,24 13:3 14:24 15:16 16:16 17:5 18:23 22:18,19 24:9 37:6 40:5,17 41:2 41:2,13 44:1 47:23 48:1 50:15 53:19 54:1 57:20 57:20 62:12 66:11 66:13,17 80:9 81:9,20 82:12 87:3,14 88:1 91:21 93:21 98:17 100:14 118:10 127:8 129:1,20 143:15 145:19 146:14,22 148:18 150:13 152:13,15 152:16 153:6 154:16,19,19 155:24 166:20 167:9,24 171:2,23 173:14,21 174:10 174:14 177:19,21 179:20 190:24 192:11,21 193:11 194:12,12,14 196:16 197:12 215:17 216:2,5 217:24 218:14 219:6 223:6,7,12 225:2 226:3,14 228:2 229:2,5,24 246:16 248:14,20 248:23 249:1 253:23 259:7	261:4 262:1,24 263:17 264:2,15 273:6,24 275:19 276:6 277:6,18 278:20 279:16 question's 216:24 questioned 65:16 65:23 87:1,18 251:15 261:10 questioning 66:21 137:5 175:7 224:12 230:14 239:3 242:14 questions 6:21,24 7:11 10:8 28:8 39:23 55:21 93:21 93:24 147:22 151:5,8,17,23 153:7,11,12,19,23 154:1,6 155:3 167:2 170:20 172:17 186:1 189:1,16 190:22 191:12 194:22 208:3 216:21 218:9 221:2 225:22 228:24 230:15 233:13,17 233:19,20 246:20 248:3 258:12 264:23 265:3 270:22 274:1 277:12 280:21 quick 265:2 quickly 202:10 209:6 quite 37:17 189:13 212:22 223:13 quote 30:21 84:6,24 88:13 90:16 92:19 95:23,24 104:23 118:8 121:13 135:23,24 136:1,6 136:6 137:12 149:24 152:6 155:22 158:21
---	---	--	---	---

172:9,18 173:5 189:5 256:16,17 260:22,23 quote-unquote 71:23 quotes 166:12 185:10,12 quoting 152:9	218:10 236:7 279:20 raising 151:17 248:9 random 38:24 203:22 range 24:6 261:13 rare 68:22,24 rate 261:22 ratings 64:18 110:19 Rational 31:2 Rationale 29:16 30:19 re-notice 26:14 27:2 reach 18:9,17 150:10 reached 37:21 137:2 207:7 reaching 18:19 23:7 react 258:2 reaction 102:14 113:24 118:22 259:4 read 12:22,24 26:1 30:24 34:23 42:23 45:13 46:16,20 47:23 48:1 49:6 49:19 50:17 53:2 86:2 87:3,18,21 88:11 92:21 93:24 96:13,21 97:10,15 100:3 102:20 117:9 118:10 121:1,14 125:20 126:1 136:8 152:17 153:3,4,6 160:5 166:14 168:18 172:6,9 173:14 174:14,18 179:12 181:21 182:3,15 184:8,9 185:6,9 189:19 196:9 197:9	204:12,24 256:1 256:10,12,18 257:17,17,18,18 259:2 260:15,18 267:2 269:3 279:18 reading 30:18 127:7 155:5 156:7 172:11,13 173:19 177:21 181:23 184:20 185:10,13 256:20 reads 66:22 real 80:20 117:4 really 18:1 26:22 66:17,20 82:4,5 82:12 100:12 111:6 131:15 176:24 182:3 189:11 196:13 198:20 202:10 209:6 264:13 realm 43:23 rear-view 179:9 reason 18:1 25:14 25:17 31:5 49:9 75:3 77:20 87:20 97:17 133:7 240:15 245:5 248:8,16 249:4 reasonable 49:5 190:6 230:11 reasonably 105:21 reasons 34:11 217:6 recall 10:6,10 17:20 39:14 62:13 69:7 70:3,7 74:5 85:20 110:11,21 111:6,7 111:11 124:22 133:16 143:17,22 143:24 160:24,24 165:21 176:3 239:12 265:6 269:12 273:14 receive 58:1 133:6 received 142:3	254:22 257:6 266:13 receiver 89:7 receiving 269:12 recipient 254:17 recognize 26:23 28:12 34:11 114:1 114:5,6 157:10 160:10 162:6 185:22 241:10,11 252:3 254:14 266:1 recollection 269:5 270:7,13 recommend 151:22 recommendation 251:12 recommendations 34:9 record 5:7,8 6:7,20 7:9 14:7 25:20 27:12 46:23 47:12 51:23 62:8,9 65:13 83:9,14 96:13 101:24 107:16 108:4,24 111:20 112:17 114:3 133:18,22 139:13 141:11 146:10 158:4 160:6 163:12 168:4 178:17,18 179:1 189:15 194:6 200:15 201:9 202:5 209:15,19,23 210:14,14,20 211:24 220:21 226:6 239:6,14,16 239:18 240:1,20 252:12 254:8,13 258:13 259:16 260:1 261:10,13 264:22 267:14 268:12 269:19 270:13 271:6,10	271:14 272:16,20 275:13 277:2 recorded 102:24 197:14 210:1,15 215:24 216:6,8 217:9 239:13 260:10 recording 102:2 209:15,20,21 210:19 211:2,3,9 213:5,11 216:7,10 218:1 223:14 224:1 232:11 240:8 272:6 273:4 recordings 240:6 records 30:18 279:10 recruit 19:5 21:21 recruiting 32:18 rectify 182:13 refer 27:20 43:5,13 50:2 75:8 99:16 106:15,17,19,19 118:21 143:3 163:12 reference 49:18,21 74:4 references 202:15 referencing 255:15 referred 47:13 90:5 106:11 188:4 193:8 244:17 referring 13:4 43:15 54:21 58:9 74:5 95:11 126:6 128:21 178:22 181:12 192:12 197:3 202:14 205:1 211:9 refers 31:20 reflect 34:14 179:1 188:24 191:11 197:16 206:12 270:4 275:21 277:11 reflected 36:7
--	--	---	--	---

110:16 220:2 reflecting 262:24 275:17 279:11 reflection 276:7 reflects 276:15 277:14 refresh 160:12 269:5 270:7,13 regard 49:22 59:7 203:23 regarding 44:7 110:16 111:1 271:4,17 273:15 273:16 regardless 67:3 regime 237:8 regional 30:3 42:12 regular 51:8,11,12 51:14 104:5 regulation 23:12 related 44:8 46:16 47:5 49:23,24 76:4,5 225:23 229:24 230:15 236:9 relating 269:6 270:14 272:9 relation 187:7 265:7 269:13 270:9 271:2 relations 186:10 237:10 relationship 74:14 203:1,8 263:13 relatively 209:6 relatives 237:3 relevant 74:1,3 relied 47:17 relies 49:13 relieve 7:10 rely 73:17 remain 173:9 remarks 87:2,23 173:22 remember 15:24 16:1,2 38:12	63:15,17 64:1,1 64:15 66:5,18 68:10 84:21 86:2 91:1 111:3 115:7 124:19 132:15 134:5 137:6 139:16 140:1,18 141:9 142:8 144:8 159:17,17 189:2 204:15 212:14 236:13 261:14 262:13 265:8 274:12 279:1 remembering 122:1 remind 279:7 reminder 246:6,8 273:18 remote 1:13 5:20 68:20,21 69:3 71:4 remotely 5:21,23 78:13 renamed 22:20 reorganization 77:7 repeat 179:23 repeatedly 173:20 repeating 179:17 rephrase 53:19 261:6 replied 96:7 reply 118:17 163:8 report 27:10 31:12 34:9 37:8 65:17 65:18 67:21 77:1 103:7,10,12,19 105:5,16 106:9,9 107:13,24 168:10 171:17 178:22 205:5 206:1 242:7 255:24 reported 138:19 154:9 155:7 171:10,21 179:19 202:13 235:7 255:22 reporter 1:18 8:1	12:10,20,24 14:24 26:9,10 27:7 47:24 48:1 69:23 94:20 125:9 248:22 261:3 reporting 1:22 75:21 76:8 77:19 79:18 81:10 82:13 136:1 represent 37:19 43:2 114:3 166:17 182:6 185:9 210:14 211:19 213:18 216:9 221:8,19 223:19 250:11,22 representation 36:7 represented 42:5 234:4 representing 2:7,13 5:6 97:23 213:6 represents 184:2 reprimanded 233:21 reproduce 173:10 184:24 request 186:20 217:16 271:5,9 272:16 require 187:2 required 7:16 18:13 45:17 181:16 requirements 19:7 19:9 24:2 requires 118:9 research 36:22 64:24 67:12,13,15 115:19 123:19 124:2 129:18 225:5 226:12 231:2 researcher 114:18 139:22 144:16,17 229:18 researchers 231:12 reserve 15:19	residence 138:23 resistance 159:4 resolution 12:13 82:24 112:2 124:14 resource 241:24 resources 129:2 241:23 242:3 respect 45:10,12 55:16 116:23 126:10 131:10 156:21 157:3 208:18 243:24 244:2,22 245:8 246:2,4,10 247:2 248:1,2 respectful 55:22 156:22,24 170:11 171:2 248:3 respecting 63:14 respond 156:5 187:8 192:16 194:17 196:4,6,14 258:2 responded 196:15 196:19 197:13 222:12 respondent 63:4 65:23 66:10 71:13 72:3,7 84:23 113:4 respondents 71:11 72:10 responding 186:20 187:5,9,14 188:1 220:1 250:18 266:23 responds 132:18 186:3,9 187:7 266:18 response 27:2 67:20 117:14 196:20 197:19 220:11 249:19 responsibility 33:10 39:21	243:24 244:6,22 responsible 18:3 29:20,23 30:12 32:8,16,18 40:12 40:14,16 43:20 54:8 77:14 208:15 246:12 responsive 30:23 rest 102:20 145:8 154:8 217:1 254:6 result 12:14 119:8 242:23 252:9,11 results 67:16,17 retain 187:22 retire 11:15,16 retired 11:14 retract 101:13 208:3 return 28:11 returning 202:23 204:10 reveal 155:22 reverse 121:15,16 132:21 review 8:23 9:7 153:8 182:18 195:18 202:10 reviewed 9:8 212:12 238:1 252:18 reviewing 8:21 15:9 67:2 rhetoric 228:5 Ricans 147:13 Rico 10:12 11:8,12 122:12,17 ridiculous 147:23 right 5:22 11:4 14:13 16:14,17 20:2 24:23 25:10 26:22 30:4 33:13 33:24 35:19 41:11 43:10,17 52:13 55:17,18,24 58:13 63:5 67:6 69:16 70:11 74:21 77:10
--	---	---	---	---

83:24 84:4 85:17	200:5,11,17,22	192:18,23 199:5	160:17 167:11,14	199:8,12 215:12
85:18 86:4,5,8	202:8 204:16	run 156:22 254:5	168:7,8,17 169:12	218:5 219:6 223:7
87:9,17 88:16,18	205:10 206:2,9,14	running 56:4,7	171:14 173:12	255:10 267:17
89:6,15 90:9,11	207:4,15,21		174:23 180:22	268:14 272:8
91:16,24 92:5,6	208:12,19 213:9	S	184:23 185:2	274:21
93:7,8,14,15 97:1	214:4 218:10	S 3:11 4:1 117:14	189:14 191:5	seconds 211:18
99:5,21,24 102:3	223:12 225:1	safe 78:5	192:17 196:3	212:6 214:15
102:15 104:15,17	228:12 229:17	sake 173:23 228:2	205:21 241:1	215:9,20 216:3,4
104:21 105:4	230:23 231:23	SAUL 2:9	243:13 244:21	217:23 219:2
107:22 108:19	232:24 233:13,16	save 177:12	250:14 255:18	220:18,22 221:20
109:2,7,10,22,23	233:17,19 237:5	saw 116:18,18	261:6 268:24	222:19 224:3
111:21 116:11	238:1,22 240:23	134:6 212:11	275:23	section 31:2 106:10
117:2,9 118:12,13	243:13,23 244:6	233:3 258:4	scale 261:16,18,19	see 13:15,20 14:8
118:15 119:5,11	246:5 247:13,24	saying 5:12 32:17	scenario 61:9	22:3 26:6 27:10
119:24 120:19	251:7 253:1,1	59:3,24 64:21	schedule 160:15,18	28:15,20,24 29:15
121:9,11,19,23	255:4,18 256:1	73:3 87:2 95:6	162:10 163:19	31:4,17,18 32:21
122:2,9 123:21	257:4 260:12,15	97:4 102:3 105:17	207:3,11 266:15	32:23 37:16 38:3
125:23 127:2,21	260:23 264:16	105:20,21 106:7	scheduled 142:4	38:8,10,21 40:2
128:5,16 129:2,8	276:4,22 277:6	117:3 124:23	160:13 163:24	40:22 43:24 45:3
129:10,24 130:12	278:10	125:9 126:1 127:8	201:3	45:7 48:9,22 52:5
131:11,13,19,20	Rights 187:10	127:10,10,23,24	scholar 90:13 91:3	52:7 58:12 62:24
132:6,10,19,23	Rigilano 154:11	132:9 143:22	91:9 140:5,6	69:24 73:24 83:1
133:2,9,16 136:18	192:8 194:5,6	144:19 147:13,18	159:7	83:22 84:5 86:24
136:22 137:3	221:8 239:23	147:19 173:21	scholars 91:11,23	88:6 90:24 91:5
138:23 139:5	rise 53:22	190:5 195:1	91:24 92:9	93:2 96:6,9 97:10
141:6 146:3,17	rises 53:20 54:5	196:16,21 200:2	scholars' 91:19	99:2 101:3 106:8
148:12,22 149:7	rising 54:6	203:15 208:14	scholarship 91:2	115:5 116:12,22
149:11 151:7,13	risk 263:9	216:8 225:12	Schriner 67:14	117:14,21 118:4,6
151:14,18 153:22	road 5:15 199:5	226:20 248:13	scratchy 188:4,6	118:19 120:19
156:7 158:8,16,21	rogue 236:2	278:14	278:4,9,16,21	124:18 126:4
158:24 159:10,13	role 40:18,23 41:3	says 29:16 30:19	screen 184:16	131:9,21 134:13
161:7,13 162:9,11	101:20	31:17 32:24 45:9	screenshots 182:6,7	135:2,12,18,23
162:21 163:8,14	room 114:10 227:1	45:9 50:12 52:5	se 57:23	136:4,15 142:9
165:5,14,20 166:1	rooted 88:10	59:13 61:2 84:2,9	search 18:10,12,17	143:21 151:3
166:4,6,14 168:15	rose 60:22	86:3,24 87:1,17	18:22 19:2 22:6	159:5 160:9 161:8
169:15 170:17	roughly 29:10	87:22 88:6 90:19	24:5	162:22 167:11
171:12 174:18,24	route 46:2	90:24 93:12,17	second 8:10 26:12	168:7 173:1 178:5
175:8 176:6,6,17	rude 173:15 174:16	96:23 97:11 98:3	28:13 34:16 38:5	178:20 183:7
177:2 179:6,9	194:7	98:22 99:1,15	45:9 96:4 101:8	184:2,18 185:19
180:3,20,21 181:1	rule 95:1,3 195:3	102:1,15 109:12	115:5 116:10	191:6 195:9
181:2,21 182:2	229:24 230:5	117:13,19,21	117:21 119:7	198:20 199:2,6,7
183:7 192:8	ruled 227:16,23	118:6,17 119:3,21	120:16,17,20,23	200:4 201:7,12
194:19 195:6,23	rules 5:14 87:13,24	121:6,22 122:1	121:22 125:15,20	205:21 213:4
196:3,5,9 197:13	88:3,19,21 91:7	126:8 131:20,21	135:16,19,20	215:9 226:10
197:17 198:4,19	94:19 98:5 156:12	132:5,6 134:13,20	173:14 178:17,20	230:20,22 236:3
198:24 199:10,24	156:19 191:20	135:22 158:20,23	185:1,19 195:22	241:2 243:1,12,18

244:21 247:20 249:12 250:13 251:5,7,16 254:16 254:17 255:11 265:23 266:6,20 268:18,21 274:13 279:11 seeing 38:13 121:15 121:16 178:14 255:20 seeking 96:6 seeks 30:20 seen 131:9 135:14 135:15 136:3 137:4 241:13 selected 20:15 169:3,6,9 selecting 173:19 selections 168:24 self-evident 11:23 semantics 190:2 semester 144:7 senate 44:7,9,9 45:22,24,24 send 75:6 76:4 141:17 250:16 254:4 264:20 267:1 sending 75:5 120:18 187:3 sends 135:22 162:19 sense 35:15 41:5 146:14 157:3 sensitive 262:8,12 sent 62:20 77:9,23 88:9 250:11,13 252:5 257:3 275:8 sentence 31:2 32:23 37:2 45:9 49:10 86:3,24 91:2 93:18 96:9 97:11 109:10 119:7,21 120:16 121:14 127:7 262:2 sentences 88:6 96:8	separate 44:11 56:17,18 60:5 255:23 September 139:16 142:9,10 144:9 157:6,15 158:3,8 162:16,17 232:22 255:20 260:4,8 263:1 271:1,7,11 271:24 272:5 series 140:24 143:6 166:18 180:12 182:5 265:15,19 273:24 serious 225:14 seriously 81:17 83:4 seriousness 176:23 serve 33:1 service 22:10 95:23 services 273:10,12 273:15,16 set 133:19 182:17 198:6 201:8,10 280:23 sets 19:9 setting 277:7 seven 110:19 179:9 261:15,24 seventh 245:10 severe 49:2 52:9 59:9,15,20 60:2 60:10,13,13,13,16 60:18,22 shaken 197:4 shaking 6:12 share 22:10 71:10 71:20 152:24,24 153:10,11 250:19 260:24 shared 249:21 260:20,21 sharing 193:4,7 250:6 Sharon 114:17 115:15,17 116:20	116:20,21 118:8 118:12,18,22 121:9 123:12,13 123:16 124:19 128:15,20 129:4 129:13 131:13 136:24 137:1 163:8,13 shocking 148:6,16 short 79:8 shortly 14:3,5,9 77:6 shot 138:22 show 5:21 45:12 199:13,22 246:22 showed 96:8,15 202:21 207:7 showing 223:20 shows 223:16 243:17 251:18 sick 161:9,10 165:17 side 37:6 71:14 183:7,20 sidebar 198:24 sided 26:4 45:5 significant 34:10 signing 134:7 200:3 silence 177:17 196:4,15 silencing 198:1,2 silly 82:2 similar 255:22 272:15 Similarly 55:8 simple 82:12 174:11 226:15 259:7,9 simplest 238:5 simply 223:22 240:9 257:16 263:19 sincere 110:9 249:5 249:7 sincerity 248:17 single 115:8	sit 70:19 103:13 191:23 280:11 situation 45:1,20 46:8 53:14 55:11 72:6 73:22 85:13 91:20 120:5 147:6 147:22 177:12 237:20 six 93:17,19 196:5 234:21 skills 214:15 skip 29:15 34:8 48:8 86:18,23 88:5 96:7 119:1 180:11 216:20 219:20 220:17 222:18 244:20 245:7 skipped 240:10 slap 52:3 slash 119:13 slavery 235:20 236:17 Slightly 248:16 slur 50:4 slurs 49:17,22,23 small 37:17,20 185:7 198:20 smaller 39:11,12 Smith 2:10 3:8 5:7 15:14,21 17:10 20:20 24:17 25:5 26:5 28:22 29:12 31:14 32:10 33:17 35:6 36:9 37:4 38:20 39:3,24 44:18 46:6 47:10 47:21 52:21 53:9 53:23 54:11 56:1 56:6,13,21 58:24 59:16,21 60:11 76:18 80:4 82:15 84:14 87:15 88:2 88:23 89:10,16,21 90:18 93:10 94:5 94:10,17 95:17	97:2 98:2 101:1,9 104:18 105:9,19 107:14,20 108:22 112:12 125:12 126:20 127:14 128:9 129:16 131:1 132:13 136:14,19 145:5 145:14,23 146:7 146:18 147:4,16 147:24 150:2,17 151:19 152:10,19 154:20 157:1 159:24 169:23 170:5,18,22 176:12,14 177:8 177:22 178:12,15 192:1 193:13 195:24 199:8,15 201:15,17,19 204:22 205:10 207:16,18 209:8 210:16 214:12,21 216:23 227:19 228:7,13 231:17 232:8,19 235:1,4 236:20 237:11 238:7,17 239:9,14 245:3,13 247:16 248:19 249:24 253:3 257:13 258:15,23 259:17 263:22 264:8,15 264:17,22,24 265:16,21 267:10 267:18,21 268:3,9 268:13,17 269:23 270:21,23 273:23 278:6 280:20,23 snip 223:15 social 161:20 173:9 225:14,14 226:13 226:13 237:19,19 socialism 236:17,23 socialists 237:5 solely 19:20
--	---	---	--	---

solicit 21:13	250:6 280:3	spent 206:11	starting 136:2	156:19 169:17
soliloquize 234:20	sounds 79:14	spoke 70:1 173:23	200:17	191:20 192:18
soliloquy 235:8	118:16,24 158:12	174:3,22,22 175:1	starts 34:9 43:4	226:8,18 245:18
solo 186:5	160:14 171:18	196:20 246:17	83:14 118:19	statement 48:12
solution 12:9	175:21 214:3	spoken 9:15,20	120:16 125:6	57:5,7 87:5 121:3
110:23	218:22 225:16,16	spot 198:3	135:17 168:21	147:23 197:13
solutions 82:10	243:21 276:24	spousal 91:22	172:6 199:24	212:17,18 234:22
solving 12:13	280:6,18	spring 110:4	state 1:7 4:12 6:1	243:5 252:15,16
somebody 14:16	source 37:18	179:12,15	9:11,14 10:9	statements 49:17
45:23 49:23,24	sources 13:10,12	SR 65:9	11:10,11,13,17,24	49:18 53:17
57:5 59:3 70:24	21:23	SRTE 65:3,8,24	12:5 13:14 15:24	States 1:1 11:9,20
138:13 150:7	Spanish 10:15,17	110:14	16:9 17:2,12 18:4	37:2,19 38:1,8
155:24	10:18,19	SRTEs 64:15	18:7 19:9 20:19	236:18 237:10,16
somebody's 50:21	speak 8:3 9:23	110:16,18	21:4 28:3 29:6,13	static 34:21
50:21 58:12 87:14	10:15 15:15 69:4	SS 65:2	29:20,24 30:1,3,6	status 50:16,19,23
someone's 112:9	221:20 222:15	staff 21:10 28:22	30:6,10,13,19	51:1
something's 58:15	249:7,8 273:7	32:12 33:6,7,11	31:18 35:2,5 36:5	stays 77:9
Soon 172:9	speaking 24:2	33:20 34:5,12,14	36:18 38:12 39:8	step 194:15 197:19
sorry 5:10 8:1	213:15 234:12	35:10,17 123:8	40:8 42:7,9 43:5	Steve 116:22,23
12:10,21,21 15:14	250:5 263:16	staffed 79:8	44:21 45:18 53:2	117:22 120:16
15:17,23 26:18	speaks 211:19	stake 264:11	54:22 55:3 56:20	126:6,6,7,8,9
43:3 48:13,16	219:3,21 220:19	stamp 125:6 128:12	61:6 67:2,8,11,13	131:10
54:24 76:20 94:20	223:20 224:2	211:8 212:5 219:2	72:19 76:13 85:14	Steven 183:14
109:2 159:22	234:5	239:7 240:22	86:16 87:11,13	188:14,22,24
161:17 175:20	special 49:12	250:10 251:23	88:1,19 91:7 93:5	198:2 200:7
188:18 193:16	182:23	254:14 260:1	94:13 95:1,10	stickered 267:12
195:24 200:3,6	specific 36:22 44:20	stamped 43:6 107:5	98:1,5 99:12	stipulate 15:18
202:4 204:8 206:4	63:15 64:1 71:10	125:16 130:6	105:14 113:11	stipulated 268:8
207:22 220:20	71:12,15 115:3	210:24 278:2	115:24 116:2,6,9	stop 23:1
231:11 252:23	147:7,8,9 152:21	stamps 43:6 125:8	118:3 119:4	stops 234:12
258:8 261:3	225:19 226:10	stand 80:19 99:2	120:19 122:4,19	story 71:14 250:6
263:15 264:16	242:1 272:1	standard 273:9,20	122:22 136:13	straight 239:10
267:11 274:8	specifically 9:3 64:8	standards 42:23	138:2 139:10	stream 27:19
280:15	64:15 89:24	235:11	141:22 143:11	Street 2:11
sort 5:14 20:14	111:11,12 113:4	Standing 241:23	146:9,13 161:21	stretch 87:2
23:16 77:23 80:22	173:19 174:20	stands 65:8 237:5	176:4,21 180:24	stretched 80:5
81:17 96:24 131:8	188:23 216:24	start 73:10 114:11	186:7,11 187:1	strike 32:21 40:5
198:20 237:4	236:14	114:12 134:3	192:5 193:8,10,19	41:13 44:1 62:12
sorted 78:10	specifics 64:22	214:12 215:3	193:19 210:13	91:21 152:13
sorting 70:24 77:12	80:10	220:18,18 251:6	225:4 227:12,24	179:20 196:2
77:13	speech 51:7,8,11,12	274:19	228:11 230:1	235:11 239:11
sound 212:23 214:8	51:15,15,18 52:4	started 43:4 75:3	243:3,5,10 245:15	246:16 248:20
218:12 219:17	52:13,16 149:6	75:21 76:14,20	247:5,6 264:1	striking 240:20
222:16 225:15	spell 69:23 141:11	77:1 110:2,3	271:18 273:9,18	string 113:7 117:5
249:22 250:2,4	spelling 69:21	147:13 200:12	273:21	117:13 128:1
sounded 248:2	spend 65:13	208:9 214:15	State's 79:13	struck 218:14

structured 12:18 152:22 156:11,13 struggle 20:7 47:9 student 16:20,22 17:6 30:21 31:6,9 32:19 34:15 36:1 36:8,15,20 50:23 51:1 64:18 65:6,6 65:9,9,10,10,17 65:18 67:1 75:21 75:23 76:5 84:17 84:20,24 85:4,5 85:15 86:12,20 96:5 101:14,17,18 102:5 103:4,7,13 103:16,20 104:2,4 104:5,9 105:3,7 105:16 106:16,17 106:19,21,23 109:19,21 110:3 110:17 138:4,9 181:19 202:18,23 203:10,12,16,20 203:24 204:11,17 268:1 276:19 student's 96:16 268:4 students 17:3 30:10 32:12 33:2,4 34:12 35:11,15,15 35:16,22 36:5 74:18 75:21 77:2 77:9 84:8,13 85:5 85:7,14,17 109:7 120:4 123:8 150:8 150:8 153:1 204:11 261:11 students' 30:23 36:11 85:8 studies 169:15 stuff 144:10 178:5 223:22 subject 118:17,18 180:20 267:15 subjected 144:2 158:14	subjective 100:21 232:14 247:13 submit 56:5,8 70:21 271:17 submitted 9:11,14 62:21,22 71:16 74:20 83:24 86:8 100:16 107:18 112:19 139:17 157:21 162:9,18 166:4 207:14 268:15 270:9 271:2 272:11 273:7 276:3 277:4 submitting 89:8 112:10 141:20 156:22 230:5 235:11 subordinate 130:9 substance 88:13 103:5 114:6 substantially 49:3 52:10 substantively 59:10 success 181:19 suddenly 23:21,21 24:10 80:20 206:21 218:14 sued 227:12 229:14 suffering 7:4 sufficient 234:10 sufficiently 49:2 52:9 60:16,16,18 suggest 38:18 219:11 suggests 38:22 summarize 77:5 103:3 144:19 170:12 252:12 summarized 13:15 summarizing 206:15 summary 224:16 224:16 226:7 276:18 summer 119:15	supervision 64:4 supervisor 17:13 50:22 69:4,6 92:11,15 112:6 support 65:18 273:10,15 suppose 23:24 40:10 124:7 supposed 15:5,12 16:9 47:5 50:5 93:6 sure 29:4 34:22 41:8 46:23 47:21 70:18 73:11 101:11 114:9 115:2 116:22 125:15 127:18 128:20 129:22 152:13 171:19 172:13 186:23 194:24 195:16,22 196:22 198:4 214:19 219:18,19 231:14 239:9 263:8 267:18,21 276:21,23 surrounding 107:12 Susan 120:13 suspect 240:15 sustained 34:22 Suzanne 17:14 switch 42:6 sworn 5:2 system 13:6,7 72:19 75:15 116:4 121:18 142:1 242:3 systematically 67:2 systemic 119:21 systemically 121:5 systems 79:7 <hr/> T <hr/> T 3:11 4:1 65:9 table 23:16,18,22	24:20 25:11 31:10 tail 119:22 take 66:20 80:21 81:15,16 98:21 101:2 104:15 113:24 142:6 172:18 194:12 209:5 217:20 231:14 251:10 269:9 278:20 280:15 taken 100:15 109:9 188:13 takes 211:15 260:4 talents 30:23 talk 42:6 68:4 71:12 72:3,4 73:22 76:7 80:12 81:8,24 93:2 124:1,19 125:10 135:8 136:24 143:3 174:20 177:6 189:10 209:23,24 210:12 talked 109:20 116:13 165:10 247:12 269:11 talking 16:1 34:2 52:13 57:7 58:12 73:8 81:1 85:17 112:10 119:17 133:11 140:1,2 142:18 143:16 149:9 155:11 167:22 205:2 225:5,6,6,10 229:21 230:17,18 230:24,24 231:1,2 234:18 235:18,22 235:24 236:3,24 237:1,7 239:2 255:14 269:2 talks 119:20 120:2 121:13 208:18 269:17 target 169:18	targeted 115:12 targeting 147:5,7 taught 35:23 taxpayers 80:2 teach 11:17 34:19 teacher 65:19 143:10 261:8 teachers 65:9 67:2 227:5,6 256:9 teaching 36:13,17 65:7 67:5,14 261:12,14,22 Teams 267:1,2 technical 5:10,11 technology 22:8 23:2 telephone 68:7,8 tell 7:22 26:3,4 52:3 52:23 66:14 83:6 89:19 92:8 111:16 142:24 171:8 185:7 212:22 248:5 257:2 264:6 telling 16:2 124:20 143:17 176:3 177:12 186:9 231:1 tenor 234:11 tense 154:13 191:18 194:14 tension 191:13 238:10 term 30:15 48:5 terms 23:5 34:18 58:8,9,20 64:14 179:15 terrific 264:23 testified 5:3 25:9 51:14 82:3 83:23 90:8 106:23 129:22 145:3 180:2 194:18 195:11 221:9 247:23 265:6 270:24 testify 163:10
--	--	---	--	---

Carmen Borges

Page 311

213:18 testifying 31:8 129:23 146:10,12 214:20,23 testimony 31:11 33:14,23 45:15 59:7 112:22 164:9 170:4,24 186:17 192:22 234:4 235:3 237:17 text 152:5,8,17 153:3,4,6,6 197:3 212:17 textbook 136:5 THAD 2:4 Thank 7:7 30:9 42:18 54:4 108:17 168:4 262:1 268:24 Thanks 5:12 theory 249:16 Theresa 117:17 thing 5:20 8:6,8,10 28:7 35:12 41:6 57:7 59:4 63:10 71:5 76:8 77:12 77:21 92:17 93:16 110:13 112:6,6 117:1 125:22 127:9,20 151:15 161:23 166:15 203:14 205:2 208:14,17,20 216:13 217:17,18 232:2 233:4 242:22 251:21 262:19,22 263:8 265:5 278:12 things 6:17,18,21 15:23 32:5 53:2 60:1 64:13 65:21 67:22 71:4 73:10 73:19 78:8,11 80:23 84:15 89:2 89:20 91:13 104:12 131:15	140:24 145:6 150:6 152:4 158:16 171:19 176:1,24 180:3 183:23 190:13,14 194:2,13 198:5 202:2 205:2 206:24 210:14 224:11 226:1 230:20 234:1 238:10 262:4 265:4,11 275:22 276:1,18 277:3 think 6:5 9:9 11:21 12:1 14:5,17 19:19 24:13,18 26:7,8 30:14 32:17 35:12 37:5 38:21,24 41:9,11 42:18 43:3 45:1 45:19,19,21 46:7 46:10 48:13,13 50:9 53:13 55:13 58:19 67:1 68:20 69:12,18 77:1 80:17 81:7,9,12 83:23 84:15,16 85:2,22 86:2 91:14,20 92:13 94:3 104:4 107:15 107:16,20,22,22 108:4 113:5,5 117:3,4 123:16 124:19 126:1 127:10,22,24 128:20 130:20 131:16 132:21 133:13,15 137:16 143:9 144:12 150:23 158:17 159:1 161:8,9 166:6 174:8 177:2 177:5 183:20 185:19 194:11 198:18 201:2,19 204:7 205:1,17	207:21,22,22 209:5 213:17 214:11,15 216:23 216:24 219:13 225:24 226:24 227:7 228:14,14 230:11,15 232:2 241:13 246:2,22 247:1,8,24 248:6 251:16,22 253:14 253:20 258:10 259:18 260:4 261:13 264:12 265:18 266:4,9 268:3 269:21 270:24 272:14 273:6,23 280:22 thinking 22:3 30:16 35:9 148:3 157:3 219:17 233:14 thinks 128:4 171:19 184:20 third 34:18 38:4 78:24 79:2 93:18 99:2 119:22 205:17 251:6 thought 41:10 51:17 73:8 100:6 106:22 233:16 268:14 thread 121:17 131:7,18 159:18 162:1,6,22 198:22 199:3,23 threads 131:19 threat 248:7 threats 49:17 three 17:21 19:23 39:16 63:20 90:24 96:18 141:10 164:17,18 207:2 207:14 throwing 198:5 time 1:17 6:4 7:9,9 8:7,22 10:1,6,7,7 12:17 13:4,23,24	15:19 21:24 22:1 22:19,22 24:1 26:1 28:5 29:9 34:23 43:7 44:20 45:19 59:3 65:13 66:20 68:20,21 74:7,9 76:7 80:21 80:23 81:8 83:5 83:20 91:14,15 99:9 104:3,15 109:15 111:14 113:22 116:19 134:11,17 135:23 137:7,22 139:8 144:9 156:9 161:9 162:8,10,13 163:1 163:16 167:23 179:8 180:5 188:2 194:1 201:3 206:11 211:15,18 212:5 215:6 219:6 220:4,19 222:3 223:22 224:2,6 228:23 231:18,19 232:4 236:2 242:12 244:13,15 251:10 257:18,22 258:13 259:5,10 259:14 260:5 264:11 271:5,13 271:23 272:4,15 272:19,22 273:3 278:18 279:2,10 times 8:2 79:9 107:17 162:19 163:22 234:5 246:17 timing 206:6 tiny 182:13 title 99:8 242:1,2 titled 158:15 168:18 256:9 titles 148:6,7,16 today 6:24 8:20 9:16,21 10:2 15:10 27:2 31:8	31:11 33:14,23 45:15 112:22 164:9 186:17 192:22 222:9 237:17 257:9 266:19 269:1 278:3 280:11 told 64:24 66:8 92:11,12,13 103:11 161:10 202:18 227:4 246:3 260:11 262:3 tolerate 238:6 tolerating 263:19 tone 154:10 155:1,2 155:22,23 156:3 156:16 167:2 170:21 171:1,3 172:10 175:8,9 176:22,23 177:23 177:24 192:24 194:23 195:2 198:6,14,15 212:7 212:9 215:13 219:7 220:10 221:11,16 222:9 238:11 246:18 tones 223:17 tools 24:7 top 40:1 48:10,19 78:12 83:15 97:10 107:6 118:19 134:4 167:11 184:14,21 195:9 250:16 topic 45:23 113:8 115:18 139:20,20 139:24 140:9,13 141:1,2 142:14 144:6 146:20 148:15 150:20 151:1 152:2 158:24 159:3 167:4 169:21,24 170:6 172:10
---	--	---	---	---

Carmen Borges

Page 312

181:7 188:11	truly 167:8	105:22 278:22	184:22 185:8	understand 6:15
189:4 191:23	truth 7:23 212:22		188:17,21 191:7	7:19,22 8:13 11:2
193:22 195:20	216:12 232:16	U	192:9,11 195:13	15:10 21:3 29:23
198:11 225:5,23	truthfully 6:24	U.S 37:17 39:2	195:17 197:15	32:3,14 37:17,20
225:24 226:10,21	try 21:21 28:10	132:22	200:1,8,20 202:6	37:24 43:5,14
226:22,23,24	51:24 71:5 77:5	Uh 226:16	202:9 205:19	70:8 106:4 121:3
229:13,18,20	182:16 203:12	uh-huh 6:18 13:19	206:3 207:10	127:11 144:15,16
230:15 233:4	213:13 221:21	14:14 16:6 19:24	208:6,24,24	144:17 148:14,14
235:15,17 236:9	224:21 261:9	27:11,22 31:19	212:15 213:8	148:15 149:8,10
248:11	265:2	32:15 38:2,6,14	214:10 218:11,20	149:19 150:15,24
topics 111:1 125:10	trying 15:8,10 16:7	39:18 43:11 45:4	220:9 223:1,23	158:24 159:2
140:16 141:1	21:3 40:23 51:22	46:22 49:8 51:19	226:5 243:2,15,19	171:19 182:16
149:16 152:23	66:5 76:9 77:5,22	51:20 61:11,22,24	244:3,23 245:20	183:21 184:5,7,10
156:13 224:11	93:1 112:17 117:1	63:8,23 65:20	245:22 248:15	185:7 202:5 209:2
231:1 236:7	117:7 125:23	68:9 69:11,20	250:12 251:20	213:1 233:9
total 56:18	127:21 146:11,14	73:18 75:9 80:14	253:10 255:5,8,13	246:11 255:15
totality 50:14 53:11	149:24 195:5	86:22 87:4,8 88:7	256:2,4 257:5,10	262:7,11
totally 113:5	196:11,18 197:7	88:12,17 91:6	258:7 259:13	understanding
149:11 224:12	197:19 204:9	93:3 96:10 99:11	260:6 261:24	24:19 29:2 86:17
225:9,12,24	208:4 214:23	99:20 100:1 102:4	265:9 266:8 270:3	115:11 128:23
230:19	216:20 217:14	102:9 109:8,11	270:20 271:3	150:6,14 181:23
touch 214:17 265:5	219:19 229:12	110:1,19 117:16	275:2,4,18 276:1	210:11 217:2
tough 126:17	230:16 239:9	117:16,18 118:5	276:5 278:15	242:8 262:14
Town 41:12	254:20	118:11,20,24	uh-uh 6:18 104:8	278:3
toxic 136:2,6	turn 188:12 205:17	120:1,6,12 121:10	118:1 215:18	understood 8:16
track 39:7	274:3	121:12,21,24	218:13,15	27:16 142:23
tracked 38:1 40:4,7	turned 103:19	122:3,10 126:10	Ukraine 234:22	148:21,23
40:9	213:3 230:19,20	127:3 128:6,17	ultimately 80:2	unendingly 114:12
tragedy 139:2	233:23	129:12 131:14,17	um 10:3 12:6 13:6	unfortunately
training 34:18	turning 249:12	132:11,20 133:3	23:20 35:3 39:9	125:8 184:16
36:23 114:21,22	twice 95:8 226:4	133:21 135:3,13	85:2 138:12 161:8	unhappy 280:12,18
114:24 115:9,12	two 10:3,3 54:13	138:10 139:6	278:22	unintelligible 41:8
118:9 137:12,15	63:17,20 66:3	140:17 141:14	un 176:2	100:12 122:15
transcript 4:20	79:14 85:6 86:10	146:23 156:4	unaware 108:6	189:18
6:13,20 240:1	86:23 88:5 89:2	157:22 158:9	173:10	unique 183:4
trauma 128:18	96:8 100:5 166:21	159:14 160:20	uncomfortable	unit 21:7,8,10,11
traumatized 249:22	172:17 181:7	161:2 162:12,17	117:5,8 123:14	40:21 63:11 67:12
treated 14:16	201:23 202:12	163:9 164:8,16	127:12 128:1,4,8	77:24
treating 153:1	203:2 206:24	165:5,21,21 166:5	136:3 144:24	United 1:1 11:9,20
trial 6:9 7:10 15:20	244:13 255:23	166:15 167:10,15	174:5,6 175:24	37:2,19 38:1,8
tried 177:12 189:7	267:11 274:5	168:9,16,23	176:5,9,15 177:16	236:17 237:10,16
192:14 194:15	279:4 280:17	169:16 171:24	189:11 192:17	units 23:6 40:20
203:23	type 114:20 150:11	174:12 176:18	220:8	69:1
triggered 118:7	228:5	178:7 179:7	underlining 172:21	universities 16:13
131:13	typical 22:22	180:14,17 181:14	undermining 63:12	university 1:7 6:1
true 100:4,15 101:3	typically 12:14	181:22 184:1,4,15	63:12 64:6,9	13:6 22:14 29:6

29:13 30:8,9 32:5 41:18 42:15 48:4 49:4 51:2 53:3 54:20 55:3 59:11 68:21 72:19 76:14 93:5 94:13 98:5 105:14 113:9 135:18,22 138:7 143:18 176:4 186:6 202:14 204:2 210:9,10 225:4 227:24 229:20 230:1 233:24 242:4 247:6 252:14 264:1 university-wide 40:9 42:14 unoriginal 91:3,10 91:11,19 92:2,3 unpack 148:6 249:15 unpacking 235:22 unprofessional 64:22 66:16 98:9 170:14,16,20 189:10 193:11,17 193:18,21 194:19 215:16 220:15 252:14 unprofessionalism 55:12 193:1,2 unredacted 178:12 178:16 untrue 211:21 unusual 69:21 185:18 unwittingly 173:10 upper 243:13 upset 155:8 191:14 191:19,20,23 192:4 193:21 upsetting 120:18 upside 52:3 URL 243:17 use 6:18 49:17	65:15,15 80:6 140:9 uses 260:17 <hr/> V <hr/> vacancy 18:18 vaguely 137:10 validate 100:24 validated 232:15 validating 83:1,3 value 55:7 246:10 252:16 values 4:12 54:22 54:22,24 55:3 193:8,10 243:3,5 243:19,23 244:12 244:17 245:15 246:5,6,8 252:14 Vardo 121:8 various 42:7 166:8 179:12 199:5 246:17 vast 81:11 venting 258:4 venue 21:18,20 venues 78:1 verbal 48:24 49:16 51:3,10,14,16,18 52:4,6,8,14,15,16 57:8,9 verdict 139:12 verify 180:15 versa 130:23 versions 178:12 vice 17:16 44:6 130:23 Vicki 1:18 victim 11:19 video 6:12 240:11 256:9 VIDEOTAPED 1:13 view 96:17,17 124:2 153:19 190:6 246:14 256:18	viewpoints 231:7 views 151:3 violate 88:21 violating 247:8,10 violation 87:24 88:19 239:4 247:21 visible 268:4 visibly 197:4 vision 30:20 voice 156:3,15 214:11 219:16 246:19 volume 8:1 80:15 81:18 voluntary 144:22 145:16 146:3,4,6 146:17,19 147:2 151:10 169:20 vs- 1:6 <hr/> W <hr/> wait 28:7,10 127:15 264:23 waiting 97:3 154:14 wanna 10:8 32:1 52:2 72:11 76:18 76:18 93:19 122:13 131:15 146:20 147:17 149:5,20,21 150:19 156:1 172:8 178:3 179:20 183:20 188:12 194:10 199:19,22 206:4 209:5 225:1 229:4 237:13 239:15 264:17 265:14 want 9:18 26:18,21 31:23 41:9 43:12 58:10 66:23 67:23 67:24 81:6 101:23 102:11,23 103:2 106:18 113:7 150:19,20 153:15	156:5 167:8 180:3 180:6,11 191:2 194:19 206:19 209:14 210:13 211:23 215:8 219:24 225:1,19 226:3 255:9 258:12 265:5,10 266:24 271:4 272:8 280:22 wanted 8:6 41:7 67:24 69:21 93:16 111:22 112:20,24 113:1 124:20 127:8 128:23 129:1 135:11 140:8 141:11 154:15 178:15 180:15 189:11 194:12 209:12,17 214:14 219:14 240:18 251:21 268:13 274:3 275:21 wanting 111:23 wants 72:7 93:21 102:12,12,15,17 102:18,22,24 wasn't 24:4,4,11 32:6,6,6,6 40:17 41:2 61:19 79:2 88:18 110:9 116:4 145:8 159:8 161:18,18 163:1 167:4 172:13 173:22,22 187:21 190:23 197:18 198:9,9 200:16 203:22,23 204:3,4 204:4,4 212:18 214:19 226:22 237:22,24 264:14 watch 256:9 way 8:12 20:23 31:6 38:4 87:21 88:22 95:7 107:10	137:8 154:3 170:12 182:21 188:5 189:9 190:6 194:13 198:5 209:17 213:3 219:1 220:15 233:14,15 238:4,9 238:10 248:17 256:21 ways 20:21 96:20 150:5 152:24 154:5 198:12 we'll 15:9 46:10 69:18 81:7,7 90:8 107:2 115:2 201:9 201:24 209:5 217:18 218:4 220:18,19 245:6,7 we're 6:7 15:17 20:7 40:16 42:18 58:12 70:12 79:6 80:5,5 86:18 113:22 162:20 166:6 178:8 190:2 195:8 202:3 209:12 211:13 217:4,12 220:17 220:21 223:16 224:21 225:5,5,6 227:9,9,10 230:17 230:18,24,24 231:1,2 239:9 280:23 we've 32:24 53:2 57:7 107:17 131:8 176:20 wearing 87:7 web 124:17,17 243:10 244:24 252:18 website 114:17,19 244:18,20 245:18 Wednesday 124:23 week 108:18 275:9 275:20 weeks 245:21 279:4
--	--	---	---	--

welcomed 127:22	wildly 219:12	257:14 258:16,24	workplace 12:14	240:24 249:18
welcoming 117:3	wind 200:22	259:18 263:7,8,15	186:15	wrote 92:5 93:1
120:19 125:24	window 183:7	263:16 264:9,16	works 21:4 124:3	144:17 262:14
Wendy 227:15,23	wish 102:18 184:17	264:19,23 278:7	workshop 55:21	
went 23:3 68:20,21	withdraw 91:22	witness's 12:23	192:21 193:22	X
70:22 138:20	withdrew 5:22	witnesses 72:4	World 96:20	X 3:1,11 4:1 211:3
176:24 200:24	withstand 126:18	78:24 156:4,16	worried 87:6	Y
201:3,3 206:15	witness 3:3 5:1 8:3	175:5,11,12	worry 161:3,6	Y 211:3
235:8 249:17,18	12:12 15:1 20:21	woman 90:11	worse 107:11	yeah 5:23 10:6
262:22 270:22	24:18 31:15 32:11	168:14 202:13	worth 247:14	13:16,24 14:5,11
weren't 32:16	33:18 35:7 36:10	219:15	258:10	16:6,6,11 17:17
78:15 154:4 213:9	38:21 39:4 40:1	women 64:17 65:24	wouldn't 16:12	19:16,21 20:17
248:7	46:7 47:11,12,15	87:5 198:1,2	20:14 58:22 67:17	22:13,15 28:21
whiplash 206:5	47:24 48:2 52:22	214:6	85:1 96:1 123:4	32:12 33:20 38:10
whistleblower	53:10 54:12 56:2	wonder 208:6,6	177:9 191:22	39:9,18 40:10
136:1	56:7,14,22 59:1	wondering 218:9	wrap 209:6 263:6	43:8 45:8,14
white 10:22 12:4	59:17,22 60:12	Wong 75:8,19	wrath 102:11	46:22,22,22 48:15
33:6,7,11,12,15	80:5 82:16 84:15	77:16	write 176:20	48:18 49:23,24
33:19 34:5,5 38:7	88:3,24 89:11,17	word 58:3 62:4	writes 123:22,24	52:14 55:11 56:17
38:12,19 39:1	89:22 90:19 94:6	82:2,2 91:5	135:1 168:10	57:12 58:16 59:1
50:10 66:1 93:20	94:11,22,23 95:18	111:10,14 115:4	180:18 205:6	59:1 60:13 63:13
93:23 94:4,14	97:3 98:3 101:2	142:19 204:16	266:18	63:18 64:15 65:12
95:2,8 117:1	105:10,20 107:19	256:23	writing 29:7 31:12	65:12 68:12 69:3
122:2,5,8,19,20	108:1 112:13	words 24:20 61:19	99:19 132:3,3	71:12,24 72:6,8
122:22 123:2,4,7	125:13 126:21	71:22 77:6 83:8	148:7,17,17	72:22,23 73:16
123:10,17 124:4,6	127:15 128:10	86:6,7 88:18	149:12 150:1,21	74:3,10,10,13
124:8,9 125:23	129:17 131:2	176:6 179:4	158:15,18,20	76:23,24 77:2,11
127:20 129:9,10	132:6,14 136:15	190:22 195:14	159:7,9 166:13	79:8,16 80:17,18
132:22 133:19	145:6,15,24	242:24	168:10,12 169:15	81:17,18 84:22
137:15,18 140:15	146:19 147:5,17	work 5:20,23 12:6	177:6,20 180:24	91:17 92:15 96:12
140:19,20 142:18	148:1 150:3,18	16:23 17:1,8	181:15,18,24	99:4 101:17
142:18,20,21,22	151:20 152:11,20	18:22 25:7 43:19	182:8 185:5 203:5	104:22 107:1
142:23,24 143:4	154:12,21 157:2	66:19 68:23 74:16	206:1,2 223:3	112:19 119:8,14
144:3 155:13,14	160:3 169:24	91:19,24 92:10,10	231:4,4 255:21	119:16,19 120:5
158:16,21 166:13	170:6 176:13,15	110:13 123:19	256:10	120:22,24 121:7
166:13 170:16	177:9,23 193:14	129:4,8 136:2,7	written 49:17 53:17	124:11 129:6,9
174:2 185:2,4	195:5,6 199:13,20	159:6 169:14	262:2,24	131:2 132:3,14,24
191:22 199:5	201:16,18,21	170:7 186:6	wrong 41:14,14	134:23 135:3
226:24 228:4	205:11 210:17	234:19 247:11	48:10 87:18	138:15 140:21
234:18 235:12	213:15 214:18	worked 60:20 75:19	107:11 131:20	141:18,21 143:1,3
236:11 256:9	217:3 221:6,23	103:11 139:1	132:9 154:18	149:21 150:19
Whitehurst 75:18	228:14 231:18	working 5:21,24	159:22 160:2,5,7	153:11 155:16
75:20	232:9,20 234:8	73:10 78:13 84:7	176:1 184:20	156:8,9 159:11
whiteness 185:3	235:5 237:12	102:22 109:6	228:9,10 229:13	160:3,14 161:4,10
wide 42:16	238:8,18 240:10	138:2 203:1,8	229:19 234:1	163:4,6,15 164:14
wider 18:10	247:17 248:21	268:6	235:21 236:3	165:15,15 167:7

167:21 169:1 173:2,4 174:7,8 177:12,17 178:10 179:3 183:13 188:11 189:12 191:14,15 192:17 193:7 195:7,10 203:6 204:19 206:7,18,20,22 207:8,13,13 212:15 214:2 215:7 217:13,21 218:17,20 219:17 219:19 221:4 224:23 225:15,20 225:22 226:23 227:3 228:10 230:4 231:8,12 235:10 237:6 242:19 243:4 245:2,9 247:17 251:9,11,14 253:12 255:7 260:19 261:1 269:8 274:13 276:5,19,24 278:11 279:3,5,7 280:3,10,19 year 27:9 99:24 102:5 253:1,9 years 5:18 11:12,16 12:7 13:22 22:4 202:12 203:2 206:24 244:13 Yep 267:8 yesterday 203:4	143:17 145:4 149:18 150:14 151:7 154:13 155:22 156:14 158:10 162:9,14 164:3 165:4 166:24 168:11 171:5,8,15 172:2 172:9 173:5,14 177:12,13 178:22 182:22 184:2 187:6,15,17,23 188:24 189:5,9,20 189:21 190:19 191:19 192:12,15 194:6,16 196:16 197:4,5,24 202:11 202:12,21 203:2 204:14 206:2,16 207:12,15,19 210:21 211:5,18 212:17,21 215:3 215:19 216:8 218:5,9 219:6 222:2 223:2 225:12 226:17 228:3 230:11 231:19 234:12 237:21 239:22 240:7 242:17 244:15 246:17 247:9,24 248:8,17 250:20,22 251:3 252:20 254:5 255:4,7 257:21 258:13 259:11 260:21 261:2,7 262:16 263:2 265:8 268:15 269:6 270:9 274:12 275:24 276:8,15 277:5,8 278:19 279:15 280:10,16 Zack's 103:21 153:19 157:14	161:12 165:14,19 165:22 166:1 167:1 189:16 191:12,16 207:3 212:4,7,9 217:24 218:14 220:10 232:18,20 234:14 234:22 235:15 237:15 245:23 249:5 263:8 270:14 ZDP 3:14,21,22,24 4:6,14 27:13 29:15 113:17 118:3,19 128:12 133:23 162:2 199:12 207:17 210:20 211:1,4,4 239:13,22 240:3 251:23 Zoom 98:23 99:1 168:13 181:17 183:19,21 188:9 188:20 201:11 267:1,1	04137 4:16 260:1 055 162:2 207:17 0612 4:15 254:14 06320 2:6 088 4:14 251:23 <hr/> 1 1 3:13 26:9,14,16 26:23 265:16 270:1,5,8 277:22 278:10 1:14 200:11,22 1:15 168:13 200:9 206:6 1:19 200:12 1:30 266:18 10 3:22 5:18 11:16 128:11,13 209:8 220:17 255:1 257:3 259:11,15 261:18,19,21 10/12 276:13 10/12/2021 275:16 276:12 10/19/2021 201:8 201:11 202:8 206:9 10/20/2021 195:8 10/21/2021 192:7 10/22/21 191:5 10:06 131:22 107 3:20 10th 255:7 11 3:23 39:1 130:3 130:4 180:12 11:03 266:5 11:06 266:17 11:14 1:17 11:16 266:23 113 3:21 12 3:24 113:16,21 124:24 130:7 131:21 133:22,24 134:1,10 160:8 165:13,24 208:4,5 268:20 275:8	278:17 12:00 200:14,14,17 12:15 168:13 206:6 12:18 198:21 199:3 199:24 200:18 12:19 199:5 128 3:22 12th 266:5 275:20 277:7 279:13 13 4:3 157:5,7,8,15 232:22 239:8 241:9 253:20 130 3:23 134 3:24 139 118:3 14 4:4 157:23 158:1 158:4 219:2 240:23 140 125:17 15 4:5 159:18,19,21 162:3,8 164:12 165:12,24 174:4 175:22,22,22,24 200:16 201:1 207:9 208:2 209:9 1500 2:11 1546 4:8 182:7 1547 199:12,12 157 4:3 158 4:4 159 4:5 15th 163:20 16 4:6 162:1,4 207:7,16,17 221:20 260:8 263:1 162 4:6 163 274:20 166 4:7 17 4:7 166:6,7,9 201:18 204:13 205:5,7,8 212:16 274:5,6 175 3:22 128:12 18 4:8 164:17,23 168:6,13 178:22
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Carmen Borges

Page 316

182:5,8,9 183:8 191:8 198:18 206:13 209:16 211:17 214:15 216:3 223:3 239:20 245:24 18:19 212:5 217:23 182 4:8 185 4:9 18th 155:12 165:7 166:3 188:9 208:11 19 4:9 77:3 180:16 185:16,20 201:9 201:14 211:17 212:6 215:8 216:3 274:16,17 275:3 19:04 212:6 19102 2:12 19th 275:2,20	133:24 134:18 256:10 275:24 276:19 2020-2021 31:12 2020-2022 30:15 2021 27:8 107:13 107:16,17,20 108:7,10,11,12,15 108:16,18 109:4 139:16 144:9 157:7,15 158:3,8 159:19 160:8 162:3,8 164:12,18 164:23 165:13,24 168:6,13 178:22 178:23 179:6,13 180:9,16 182:8 188:13 191:9 206:13 207:9 208:4,5 209:18 223:3 232:22 239:20 245:24 251:24 252:6 253:7 260:5,8 263:1 266:1,5 268:20 270:1,5,8 271:1,11,24 272:5 272:12,17,23 275:3,9 276:4,23 277:22 278:10,17 2022 29:10 58:2 74:9 241:9 250:11 251:1 252:23 253:11,20 255:1 257:3 259:11,15 2024 1:16 239:8 240:23 20th 188:18 21 4:11 98:22 104:20 108:1 109:4 240:19,21 241:6 244:17 246:7 252:24 253:2,3 215-513-7278 1:23 22 4:12 158:3,8	241:1,2 243:7,9 244:4 253:18 271:1,11 272:5 2249 29:15 23 4:13 219:2 250:7 250:8 23:14 218:23 24 1:16 4:14 251:23 252:1 24:05 219:20 240 4:10 241 4:11 2415 3:23 130:7 131:19 243 4:12 25 3:14 4:15 254:11 254:13 250 4:13 251 4:14 2533 195:23 2537 4:7 166:8 2539 167:9 205:7 254 4:15 2541 178:5 2547 180:11 2548 180:18 2572 4:3 157:6 26 3:13 4:16 260:1 260:2 265:12,14 260 4:16 2622 3:17 46:20,20 2624 48:13,22 2631 3:16 43:4 264 3:8 265 4:17 2661 96:3,4 267 4:18 269 4:19 27 4:17 259:24 265:11,20,23 272:12,17,23 28 4:18 265:12 267:7,9 274:3,17 275:7,12,13 276:6 29 4:19 269:21,22 277:19 279:16	3 3 3:15 37:1,12,14 48:14 244:20 265:16 3:00 266:19 3:05 268:21 30 11:12,12 31 108:14,16 3161 196:2 31st 98:22 179:5,23 3236 160:7 3278 4:17 265:24 34 224:3 36 12:7 37 3:15 38th 2:11	46:15,24 56:24 59:8 214:15 261:20 5:00 209:2 50 33:2 51 224:2 55 4:6 58 220:22 59 33:7
2 2 3:14 25:21,22 27:8 37:5,10 48:8 255:12 265:16 2:00 266:24 2:23-cv 1:5 20 4:10 76:12 188:13 209:16 216:4 217:23 239:6,11 240:4,13 250:11 251:1 265:24 2018 76:18,21,22 76:24 77:2,3 2019 76:14,15,16 275:24 2020 13:23 27:8 29:10 31:18 58:2 62:13,15 64:2 68:13,14,17 74:9 83:16,20 100:17 107:6,16 110:4 113:10,16,22,23 119:11 124:24 130:8 131:21			4 4 3:16 42:19,20 55:14 93:4 212:6 215:8 4/24/2023 185:18 4:46 243:14 40 33:3 35:14 220:21 404 2:5 41 220:17 412 3:20 107:5 4123 3:19 98:15 4134 4:19 269:20 278:2 42 3:16 43 210:20,23 211:5 211:7 239:13,22 43:55 220:18 44 220:18 45 215:20 221:20 46 3:17 47 42:22 49 222:18 4934 4:18 267:13 4935 267:13 49th 222:18	6 6 3:18 83:11,13 106:10,14 108:8 6/12/24 243:13 64 33:7,14,19 38:12
			7 7 3:19 98:12,14 108:14 261:18,20 7/13/2021 255:15 7:02 280:24 75.5 38:8	8 8 3:20 107:2,4,6 108:17,18,20,21 216:4 217:23 808 255:8 83 3:18
			9 9 3:21 113:15,18 125:3,5,18 251:24 252:6 253:7 9:12 124:24 91 46:15 47:1,4 57:1 59:8 98 3:19	
			5 5 3:7,17 46:11,13	

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DATE: *August 20, 2024*

REF: *Zack De Piero vs. Pennsylvania State University, et al*

Date of Deposition: June 24, 2024

Witness: Carmen Borges

Enclosed is a copy of your Oral Deposition Transcript, along with the original Witness Signature Page and Deposition Correct Sheet.

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ERRATA SHEET

<i>PAGE</i>	<i>LINE</i>	<i>FROM</i>	<i>TO</i>	<i>REASON</i>
5	23	and so it --yeah	yes	Typo.
9	4	Notes of interviews, interviews	Notes of interviews	Typo.
9	22	Yes, I did. I was	Yes, I did.	Typo.
10	3	Um, we met for two hours. No, not even two hours.	We met for a while.	Did not recall amount of time I met with my attorneys during the deposition; recalled upon reviewing the transcript that it was longer than two hours.
10	6	Yeah, I can't recall exactly the amount of time, but it was enough time, the necessary time to--	I can't recall exactly the amount of time, but it was enough to review my notes.	More complete answer.
10	14-16	Good, I'm glad to hear that from you. And I heard—you should speak Spanish now. I hear your daughter was-	I'm glad to hear you know that. Do you speak Spanish?	Typo.
11	10-12	My husband got a position at Penn State. He was a professor at Penn State, so we moved here from Puerto Rico about 30 some years ago, 30 plus	My husband was hired by Penn State in a faculty position, and we moved here from Puerto Rico some 40 years ago. I come from a military family. My father fought in World War II and in the Korean conflict. He was later stationed in several military forts in the US where we lived for several years.	More complete answer. Upon review of the transcript, I recalled that I was in the United States prior to moving here for my husband's job.

12	7	I've been there 36 years. Mostly, you know, in complaints	I've been here for 36 years in my position at Penn State and have held several roles in the office including twice interim director positions managing all functions of the office.	
12	8-9	my focus or my preference or my--	my focus or my preference is to mediate resolution of complaints.	More complete answer.
13	6-7	Um, the university has established a system, a broader, bigger system for people to file complaints	The university has implemented a broader system to file complaints.	More complete answer.
13	8-9	Before, people would, you know, on their own decide to file a complaint and go to our office	Previously complaints were filed in person.	Answer stated more clearly.
13	10	You know, online, bias. They have different sources	Now, there are different online options to file a complaint.	More complete answer.
13	11	to file a complaint. So we are getting, you know	We now receive	Typo.
13	12-13	complaints from very different sources, you know, and lots	complaints from various sources, and more complaints.	Typo.
13	16	Yeah. That's what --- you know, I mean	Yes, that is what I mean	Typo.
13	17	what-- that's what's created so much more awareness	that created more awareness for filing complaints.	More complete answer.
13	18	and-and-and you know more	and more complaints	Typo.
17	16-17	Assistant --assistance vice president	Assistant Vice President for Affirmative Action.	Typo.
18	11	That-- was an enforcement or that we--	that is an executive order mandate that we comply with.	More complete answer.
18	21	then, you know,	then the	Typo.
18	22	have--can work with that	work with that	Typo.
19	12	more so the focus	the focus	Typo.
19	16	yeah	Yes, for the purpose of monitoring compliance with the executive order	More complete answer.

21	12	faculty	committee	At the deposition, I meant to say the word "committee."
21	15	It's---it's also an academic – you know,	It is also an academic issue.	More complete answer.
21	16-17	based –the faculty does that based on their needs	based on the needs for the position.	Typo.
21	23	so....	Remove so	Typo.
22	4	major change since, you know, we-a	changes since a few years ago.	More complete answer.
22	5	gets	get	Typo.
22	6	by about, you know, the search committee	from the search committee	Answer stated more clearly.
22	7-8	all the information, now it's - it's it's on	The information is now centralized.	More complete answer.
22	10	There is now share services, is what they call this.	It is now under the Share Services unit in HR.	More complete answer.
22	24	We don't get involved at all	We don't get involved.	Typo.
23	2-3	With all the –all the technology,	With technology, everything is now centralized	More complete answer.
23	12-13	For affirmative action regulations, the purpose of that, those are the categories, Now they are broader	For affirmative action regulation, those are the categories.	Answer stated more clearly.
23	14-16	you know, now with—now, they're broader because, you know	the concept now is broader in that everyone contributes to the diversity of the workplace.	More complete answer.
23	20	Um, well, everybody	Everyone brings diversity	More complete answer.
24	3	affirmative action, where the four categories. But that	Affirmative Action's four categories are	Typo.
24	4-5	wasn't—that was the minimum, you know. That wasn't -- that was our obligation to -- to monitor.	was our obligation to monitor.	Answer stated more clearly.
24	6	committees you know...you know, had free range to hire	committees have free range to select candidates for interview and recommend for hiring	More complete answer.
24	7-8	the best qualified applicant. And there, you have tools with a lot of diverse people	Diversifying the applicant pool increases the opportunity to diversify the work unit.	More complete answer.

24	13	I think now, it's defined like everyone has	It's defined as everyone brings a diverse perspective.	More complete answer.
25	18-19	--for the-- for the position	for the position	Typo.
64	6	was not --you	was not respecting her	More complete answer.
64	7	know	Remove word	Typo.
79	24	Not – gradually. Gradually, it has	Gradually, it has	Typo.
85	12	No, it does, its--	It is not professional	More complete answer.
91	20	but it's nothing	but it's possible	Typo.
97	8	No	No, that was not part of my investigation.	More complete answer.
97	19	I mean	Remove-I mean	Typo.
100	5	and --	between two faculty.	More complete answer.
100	5-6	or disagreeing	Remove words	Typo.
100	18-19	I mean	Remove I mean	Typo.
104	8	Uh-uh	Yes. I know it is 40 years.	As I read the transcript, I realized this was a typo and I knew the answer to be 40 years.
105	20-24	If the person is not saying on what basis, is not saying— well it could reasonably be assumed that it would be – typically it's about race	If the person is not saying what the basis is, it should not be assumed what it is. But if the person is Black or another race it may be assumed that race is the reason for the complaint.	More complete answer.
106	19	----it may refer to the student	It may refer to another student	Typo.
107	1	Yeah. No. No.	Yes	Typo.
108	1	Okay. The anonymous was March '21,	The anonymous was March 2021	Typo.
108	2	The anonymous, Huh?	Remove words	Typo.
110	13, 14	So one thing I did was in her work about the faculty SRTE.	So, one thing I recommended was to review the faculty's SRTE's (teaching evaluations from students)	More complete answer.
114	8	I have very familiar with that, yes	I am familiar with that, yes	Typo.
114	16-21	The new hires were highlighted or introduced in the website. And Sharon, who is a faculty member,	New hires were introduced on the Campus website. Sharon H, a faculty member who does research in areas of racism	More complete answer.

		researcher in these areas of racism and other, she made a comment in the website something about it looks like this office -- or this officer looks like the type that would need training, something like that.	and has study the Fraternal Order of Police organization, made a comment on the website that a new officer hired looked like he would need diversity training.	
122	13-14	I wanna say that it certainly was easier for me to get ahead than if I were – had been Black.	No, though I wanna say that it certainly was easier for me to get ahead than if I were – had been Black. I understand the racial history of the country.	More complete answer.
122	16	Yes. Believe it or not there—there is racism in Puerto Rico	Yes. Believe it or not there is racism in Puerto Rico.	Typo.
122	21	all the positions of power and all the decisions are made by white people at Penn State	all positions of power and all decisions have historically been made by white people at Penn State	More complete answer.
123	12	about –about—about her	about her comment	More complete answer.
123	19	she—she---- that's her line of -- of research and work	That is her line of research work	Answer stated more clearly.
123	23	She is a member	She is a faculty member	More complete answer.
124	15	apologize	apologize to the police officer	More complete answer.
130	16-17	The others, she was coordinating the programs	She was the coordinator of the program.	Typo.
131	2-5	Yeah. That would be that's what she would also be arguing that she's a female and he's a male and there's a power dynamic with also	Yes, that could be, and she believes there is a power issue with gender also.	More complete answer.
136	23-24	I guess it should be, but I don't –the only moment in our office was to deal with Sharon, talk to	It is. Our office was addressing the complaint about the comment made by a faculty member about the police officer that was reported to our office.	More complete answer.
138	12	They were going to detail him for, um, what do you call this about taking somebody for care, mental care.	Police went to check on him for a mental health care follow-up.	More complete answer.

138	21-22	He came out aggressively, and a police officer shot him in the hall	He answered the door and came out to the hall of this apartment building and something went wrong in the interaction and the officer shot at him and kill him in the hall.	More complete answer.
141	17	He filled out a form, completed a form and send the form, yeah	He sent a written complaint form.	Answer stated more clearly.
142	22	Well, it's phased white people, so it can be understood to mean all white people,	but it refers to the white race in general, not to a specific person.	More complete answer.
143	15	You know, question what's the problem. What are you talking about? What issues do you have?	Investigate if the lecture is related to the subject matter of the class.	More complete answer.
145	8-9	It wasn't her only imposition or position.	It wasn't her imposition.	Typo.
145	15	Nobody has to go to this.	No one had to attend.	More complete answer.
145-146	145:24-146:1	Whose decision would it be for the Black professor to be there or not? Not the other --	The decision would be for the Black faculty. But, if the discussion is not directed specifically at the Black professor, as an individual, it's different than discussing the Black race in general.	More complete answer.
146	11	You know, I am trying to---	I am trying to explain that it is a different situation	More complete answer.
146	20	faculty that wanna go discuss that topic	faculty that want to go have an academic discussion on the topic.	More complete answer.
147	17-19	Not necessarily. I would wanna know what --why are you saying that	Not necessarily. I would like to know your reasons for saying that.	More complete answer
148	1-2	And that was --exactly---And that would have been the purpose of what I was, you know thinking is if that's the purpose of those meetings, let's get to the what is -- what's the message here and what do we need to learn	And that was the purpose of the meetings that I was discussing with him. Beyond the shocking title, one would want to know, discuss and debate societal issues that can impact teaching and	Answer stated more clearly.

		from this. What is the message? Let's unpack this message. Beyond the titles, the shocking titles, what is it that we as writing professionals need to -- need to -- need to be discussing and learning. That was the purpose of those meetings.	learning. That was the purpose of those meetings.	
149	21-22	He – he -- He didn't agree and didn't wanna go beyond that, yeah. He didn't wanna go beyond an academic discussion.	He didn't agree with having an academic discussion on this topic.	Answer stated more clearly.
150	18-21	Not because he didn't agree. He didn't wanna – he didn't wanna go beyond. Yeah. He didn't want – he was opposing that topic within the writing program..	He didn't seem to agree with the topic being discuss within the writing program	Answer stated more clearly.
151	1	He—the topic was—I mean, if you go to the meeting and engage in conversation and put your—your views across and see what comes out of it, you know, and --	Maybe. We talked about the value of participating in meetings and engaging in academic discussions to have a better understanding of the issues that may impact students learning	More complete answer.
153	1	Treating students or whatever.	Teaching students.	Typo.
156	1	would wanna make a comment	Would want to make a comment	Typo.
156	8-12	It was distributed. Yeah, it was distributed ahead of time, but they were, , yeah. I guess—I don't know if it was an agreement amongst all of the faculty there whether they agree, but it was a pretty structured meeting. There was some – some rules of behavior of all that. It was pretty structured, and the topics.	It was distributed. Yes, it was distributed ahead of time. It was a structured meeting. There was some – some rules of behavior of all that. It was pretty structured, and the topics.	Answer stated more clearly.
166	15-16	The thing was considered in that meeting.	The things to be discussed in the meeting.	Typo.
170	8	gonna be discussed	going to be discussed	Typo.

170	11-14	The only--the problem here to summarize it is that the way he—he—he was expressing himself that came across as disruptive and unprofessional.	The problem was how he expressed himself that came across as disruptive and unprofessional.	Answer stated more clearly.
186	3	They file complaints.	Remove	Typo.
186	13	They investigate complaints against---	The State agency that investigates complaints of discrimination.	More complete answer.
186	16	(indicating)	Yes	Typo.
187	6	of the agency	from the agency	Typo.
189	2	One remember	One member	Typo.
190	1-2	No, it doesn't, but it's expressions, facial expressions. I mean, we're talking semantics here, But---	No, it doesn't, but his expressions, facial expressions. I mean we're talking semantics here.	Typo.
190	8	Very angry. Okay.....	That is how his participation in the meeting was described.	More complete answer.
190, 191	190: 21- 191: 1	Well, at the point when – you know, not using those words, but insisting that Lila answer his questions, yes. He did – it wasn't like, you know, he posed a question and – and others could jump in and give him – give him some ideas or some answers.	Well, not using those words, but insisting that Lila answer his questions. It wasn't like he posed a question, and others jumped in to give him an answer or some examples.	Answer stated more clearly.
191	13-15	Tension when she arrive. Notice one faculty seem upset. Campus what – people different. Yeah. Article in the meeting. There is a faculty on the – yeah.	She noticed tensions when she arrived at the meeting. She noticed that one faculty member seemed upset. Explained that at the Abington campus composition of the students is different than other campuses. Many more students are from lower socioeconomic backgrounds and lack experiences outside their neighborhoods. The meeting was to discuss approaches to teaching to help students learn. .	More complete answer.

225	14	serious social—social program.	serious social issue.	Typo.
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SIGNATURE PAGE

I have read the foregoing transcript and the answers given by me are true, correct and complete, to the best of my knowledge, information and belief, except for the corrections noted hereon and/or list of corrections, if any, attached on a separate sheet herewith.

Carmen B. Borges

Signature

9/9/24

Date

Case Name: Zack De Piero vs. Pennsylvania State University, et al

Witness: Carmen Borges

Date: June 24, 2024